28

SPEECH

OF

HON. C. L. DUNHAM, OF INDIANA,

ON

THE CONDUCT OF THE LATE SECRETARY OF THE INTERIOR IN THE PAYMENT OF CERTAIN INDIAN AND VIRGINIA CLAIMS.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, WEDNESDAY, SEPTEMBER 11, 1850.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1850.

THE EWING INVESTIGATION.

Mr. DUNHAM said:

Mr. SPEAKER: I intend to employ the brief time allotted to me in vindicating the action of the committee, whose report we are now considering, and of which I had the honor to be a member, and in endeavoring to place before this House and the country, in its true light, the conduct of the late Secretary of the Interior in the transactions referred to it for investigation. Sir, I shall expose a case of Galphinism unparalleled even by any transaction under the late Administration, which has yet been brought to light. I think I shall be able to show that thousands of dollars have been plundered from the Treasury, not only without law, but in violation of the plain, express, and emphatic language of the law, and of the clear provisions of the Constitution. The subject is an important one, for it involves not only the thousands that have been paid, but the principles upon which they were paid render the Treasury of the Republic liable to the payment of millions more. I cannot do justice to it or to myself in a single hour, for to present the merits of at least one of the cases which I shall consider, I must carry my investigations back through the legislation of Virginia and of the Federal Government, to the very formation of the latter.

Sir, I have been much surprised at the report of the minority of the committee, at the course they have seen proper to pursue in reference to the report of the majority, and at the efforts made here to stifle this investigation. Sir, they may succeed, from the peculiar circumstances which surround us, in procuring a condemnation by this House of the action of the committee. They may get the report set aside and the resolutions accompanying it rejected. The strength of the Whig side of the House—the late Secretary's own political friends, increased by the support of those honorable gentlemen upon this side whose constituents are interested in the matter, may be sufficient for that purpose. Let them do it, sir; I shall console myself that we of the majority of the committee have done our duty. The transactions have been brought to light; the conduct of the late Secretary has been exposed to the country. The facts cannot be suppressed; they have gone out before the people, who will pass sentence upon them. This cannot be prevented, although this report may be stifled here. The people will want no better evidence that there is something wrong in these transactions, than the effort made here by the friends of the late Secretary to stifle and cover them up. An innocent man dreads no exposure of his conduct; he courts an investigation of his proceedings. They who dread the light are those whose deeds are evil.

There can be no better vindication of the invincible truth of the matter set forth in this majority report than this effort on the part of the minority of the committee and the other side of the House, to avoid them by the veriest special pleading that ever was seen or heard, and the disinclination on their part to meet directly, and endeavor to overthrow them. This effort to escape them is evidence that they cannot be successfully combatted.

Sir, we are told that this investigation is unconstitutional. The novel doctrine is avowed by the minority, and by the gentleman from Virginia, [Mr. BAYLY,] that this House has no right, through a special committee, to investigate the conduct of the executive officers of this Government. Has this House no right to institute an investigation into the transactions of an executive officer, for the purpose of ascertaining whether his conduct has been such as to make it the duty of the House to prefer articles of impeachment against him? How otherwise can we know whether his conduct merits an impeachment? Shall we prefer one upon mere suspicion, or upon mere hearsay—mere rumor? And when the House has reason to believe that the conduct of such an officer has been such as to require an impeachment, has it no right to make a preliminary investigation, for the purpose of ascertaining the facts upon which the impeachment is to be predicated? How else can we authoritatively know them? Shall we prefer it by guess? Shall we run the hazard of getting proof to sustain it, and perhaps allow a corrupt officer to escape because of a variance between the articles preferred and the proof produced to sustain them? Have we not a right to investigate the transactions of the executive officers of the Government for the purpose of ascertaining the construction which they have put upon particular laws, and the manner in which they have discharged their duties under such laws, or to ascertain the operation and effect thereof, that we may know whether further and what legislation is necessary to enforce the compliance of the officers with their duty, to secure the rights of the citizen and to pro-

tect the Treasury of the Republic? How else are we to ascertain and rectify abuses in the administration of the Government? Or shall we allow them to go unrectified?

Mr. BAYLY. If the gentleman alludes to the position taken by me he mistakes it. I admit that the House has a right to institute inquiries into the transactions of the officers of the Government, for the purpose of ascertaining facts upon which to predicate articles of impeachment, or with a view to further legislation; but as this committee by their report and resolutions, propose neither, therefore the investigation is improper and unconstitutional, and the report and resolutions should be rejected.

Mr. DUNHAM continued. Sir, we were not directed by the House to do the one or the other. We were directed to inquire into certain transactions, and report the facts to the House. This we have done. It is now for the House to judge as to what is necessary to be done in the premises. The committee could not recommend the impeachment of the late Secretary, for they knew that the House had no authority to prefer articles against him, he having gone out of office before the report was made. We have reported the facts, and applied those facts to the law; and, as we think, have clearly shown that these sums of money have been paid in violation of the law. It is now for the House to say whether they will allow this to go on, and thousands of dollars more to be paid away in the same way, or whether they will adopt such legislation as shall put a stop to it. The resolutions reported are but the conclusions of the law and facts set out in the report and legitimately arising from them. The correctness of the first two, the gentleman from Virginia will not dispute; nor will any of his colleagues upon this side of the House. And I think I shall satisfy his colleague upon the other side, [Mr. MORTON,] that they are correct before I get through, for I shall show him that they are not only in accordance with the decisions of the Executive department of the Federal Government, made again and again for nearly twenty years, but with the clear and emphatic decisions of the Supreme Court of his own State.

Sir, as I have before remarked, the best evidence of the correctness of these resolutions, and of the law and facts set forth in the report, is, that the gentlemen are afraid to walk up and look them boldly in the face; that they seek to avoid taking a direct vote upon their merits, but endeavor to draw off the attention of the House and the country upon a collateral issue, and that the most suspicious of all others, as to the jurisdiction. They seek to break their force and effect by the pretext, not that the report and resolutions are incorrect, but that the investigation was wrongful and unconstitutional. Sir, when a man is put upon his trial upon a charge of crime or misdemeanor, if the facts and merits of his case will acquit him, he does not want to be acquitted upon a mere technicality—upon a plea to the jurisdiction of the tribunal. Besides, I should like to know of the gentleman from Virginia, the gentleman from Ohio, or anybody else, how the conclusions of the committee—the omission, on their part, even if it had been made their duty to do so, to propose either impeachment or further legislation, can affect the rightfulness and constitutionality of the investigation, when everybody knows that their recommendation would not have been at all obligatory upon the House—the House would be governed, not by that, but by the facts and arguments upon which it was based?

But again: has not this House the right to investigate the transactions of an executive officer, when that officer justifies his acts under a construction of an antecedent law of Congress, which he pretends has been given to it by the subsequent acts of this House separately, and by the subsequent legislation of the two Houses jointly, in order to determine whether any such construction has been given to such antecedent law, and, if not, to disavow it? Shall he be allowed to throw the responsibility of his own iniquitous or reckless acts unjustly upon Congress, and shall this House have no right to investigate the subject, in order to place the responsibility where it belongs, upon his own corruption or ignorance?

Mr. Speaker, the conscientious and constitutional scruples of the minority of this committee in regard to this investigation, are all a pretext, to avoid the merits of the report and resolutions of the majority, as I can, in one moment, satisfy the House. I ask gentlemen to examine the resolutions under which this committee was raised. They are five in number. The first resolution instructs the committee to inquire and report—

"Whether Thomas Ewing, Secretary of the Interior, reopened and paid to G. W. and W. G. Ewing a claim against the United States, of seventy-seven thousand dollars, after the same had been adjudicated and rejected by the proper officer of the Government before said Ewing was inducted into said office of the Interior; who were agents and attorneys for said claim; what clerk in the office of said Department of the Interior had interest in said claim, and how said interest, if any, was acquired."

The 2d directs them to inquire—

"Whether the Secretary of the Interior reopened and paid interest, to the amount of $31,000, on the pension granted to Commodore James Barron for services rendered in the Virginia navy during the revolutionary war, after the principal had been fully paid and discharged; and if said interest was paid, was it simple or compound; who was the agent or attorney for said claim; and the authority for such claim, if any."

The 3d. "Whether said Ewing reopened and paid a claim to a person or persons on behalf of the Chickasaw Indians, of $108,000, after the same had been adjudicated and rejected by the proper officer of the Government before said Ewing was inducted into the office of the Interior; who was the agent or agents, attorney or attorneys, and who was the party or parties in interest, and whether said agent, attorneys, or parties in interest held at the time of such payment any office under this Government, or now holds such office, and if so, what office."

The 4th. "Whether said Ewing usurped the power of appointment in the Pension and General Land Office, and whether the same was a violation of law; also, whether any clerk of said Ewing's appointment reviews the opinions and decisions of the Commissioner of Pensions by order and direction of said Ewing; and if so, the authority for such order and direction."

And the 5th. "Whether any person or persons in office by appointment from said Ewing are correspondents or editors of newspapers, and what papers they edit or write for, and what are their salaries."

The resolutions are all of the same character—that is, they all direct a simple inquiry into the acts of the late Secretary of the Interior, and of those in the department under his charge. The last two look to no other or different action on the part of either the committee or the House than do the first three. They do not propose an impeachment of the officer any more than the others, nor do they any more propose or have a view to further legislation. Look at the report and resolutions pro-

posed by the committee. They propose no different action by the House upon the matters referred to them in the last two than they do in reference to the matters referred to them by the first three. Under the last two they neither recommend impeachment, or legislation, or action of any kind. Now, sir, behold the beautiful consistency of the very conscientious gentleman from Ohio, and the minority of this committee. They contend that the investigation directed by the first three is wrong and unconstitutional, and that they should be rescinded by the House, and all proceedings under them set aside; but not one word do they say of the unconstitutionality of the last two, though they are precisely of the same character. Nay, more; in the resolutions which they desire to substitute for those of the committee, whilst they propose to rescind and set aside the first three, they propose to send the last two back to the committee again for a further report upon them. There is consistency with a vengeance, and there are conscientious scruples of the most convenient character; for they are used to set aside all that is disagreeable and hard to manage, but to retain for further action whatever may suit the purposes of the gentlemen!

Mr. OUTLAW. I wish to correct the gentleman in his statement of facts. The substitute proposed by the gentleman from Ohio [Mr. VINTON] is not the work of the minority of the committee, nor are they responsible for it. The gentleman from Ohio presented it upon his own responsibility.

Mr. DUNHAM, (resuming.) Well, sir, I am glad my friend from North Carolina [Mr. OUTLAW] is out of that scrape, and I do not blame him for desiring to escape from so palpable an inconsistency, to characterize it by no harsher name; and I will hereafter, if I have occasion to allude to it, treat it as the sole production of the gentleman from Ohio.

Now, Mr. Speaker, why does the gentleman from Ohio make so wide a distinction between the three resolutions and the proceedings of the committee under them and the other two? What reasons have operated upon his mind, to bring him to the conclusion that three of them are unconstitutional, and should be rescinded, and that the other two are constitutional and proper, and should be further acted upon by the committee and the House? Surely they must be grave and important ones, clear and conclusive. Well, sir, I think they are. I think the House and the country will so consider them, and will not be astonished at the effect they have had upon the gentleman's mind, and the conclusion to which they have brought him. The first three resolutions imply grave charges against the official conduct of a Cabinet officer of the late Administration, of the gentleman's own political party—charges of having squandered the public money—of having illegally paid out large sums of it, at the solicitation of political favorites; charges which, if true, (as I think the proceedings of the committee under them clearly show,) must bring down upon him the merited indignation and contempt of the people. These charges were brought against a high ministerial officer, who exercised a controlling influence in that Administration, and who still exercises great influence with his party; who had, and may again have, immense patronage at his control. The other two resolutions relate to matters of much smaller moment, and one of them is confined entirely to the conduct of humble clerks in the department, who have neither patronage nor power; who depend upon the influence of others, instead of exercising any of their own. Besides, the committee find nothing improper in their investigations under them, and acquit all parties referred to in them, whilst under the others they establish some stubborn facts, which it is not easy to avoid or refute. Therefore, can it be surprising that the gentleman should come to such diverse conclusions upon them?—should think one portion unconstitutional and very wrong, and the other all right?

But, Mr. Speaker, I shall spend no more time upon the right of this House to make this investigation. The country, I think, will duly appreciate the objection made to it by the gentleman from Ohio, and will attribute it the rather to a desire to cover up the gross ignorance and corruption of a public officer, a political friend and partisan, in the discharge of his official duties, than to any anxiety about an infraction of the Constitution, and especially as it comes from one who usually, if not invariably, votes in favor of all investigations into the transactions of Democratic officers.

I shall now examine the cases referred to the consideration of the committee under the first three resolutions. I shall first take up the payment of the claims of W. G. & G. W. Ewing. I intend merely to present its merits fairly and plainly before the House and the country, which I think the gentleman from Ohio did not do in his remarks upon it a day or two since. I shall dwell upon it but a moment; for as most of the money has been already paid in this case, and all of it in the Chickasaw case, any action of the committee or the House upon them now, will be like locking the stable door after the horse has been stolen. But I mean that the country shall know the justice, or rather the injustice, which was meted out by the late Secretary to that unfortunate race of men so rapidly vanishing before our onward progress, and who are under the guardian care and protection of this Government, and peculiarly entitled to our sympathy. The Messrs. Ewing were Indian traders, and professed to hold claims against various Indian tribes for merchandise they claimed to have sold them upon credit, to the amount of $61,057 02—much the largest portion of this sum being against the Pottawatomies. It is to their claims against this tribe that I shall confine my attention.

This tribe of Indians consisted of two bands—the one called the Council Bluffs band, and the other the Ossage River band; but though divided into these two bands, they were all one tribe; and to make any transaction valid and binding upon the tribe, the chiefs and headmen of both bands must have consented to it. In July, 1846, this Government made a treaty with this tribe for the purchase of their country. This treaty was signed, as was necessary, by the chiefs of both bands, and by it this Government obligated itself to pay to the tribe for their own use in their own way, divers large sums of money. At the making of this treaty, the Ewings, and other traders who also professed to have debts of a like character with theirs, to large amounts, against these Indians, presented them through their agents to the commissioners who made the treaty, and sought to have provision made in it for the payment of

their debts by this Government out of any moneys which it might agree to pay to the tribe for their country. But the commissioners, acting under an express resolution of the Senate, and of the directions of the department, very properly refused to make any such provision for the payment of the claims, or to have anything whatever to do with them. There was no reason why they should. They were individual transactions with the Indians, with which the Government had nothing to do. They had sold the goods, if they really ever were sold, to the Indians, and to them only had they a right to look for their pay. This Government has hitherto sought to shield the Indians under its protection from the rapacity of unscrupulous traders, and not to aid that rapacity in plundering them. After the treaty was signed, and they found that the commissioners would not lend themselves to their schemes, they on the same days on which it was signed by the respective bands, procured a few of the chiefs to sign certain obligations or acknowledgments of indebtedness against the tribe to the enormous amount of about $130,000.

Now, sir, to make the treaty valid upon the whole tribe, it was signed by all the chiefs of both bands, one hundred and thirty-three in number, of whom fifty-nine were of the Council Bluffs portion of the tribe, and seventy-four of the Osage River. These pretended obligations were signed by some few of the chiefs of the upper or Council Bluffs band only, and the other by a few of those of the Osage band only—one set, those given at the Bluffs having eighteen signatures, and the other only eleven; and yet gentlemen have the assurance to call them valid national obligations of the tribe, which were sufficient evidence of the indebtedness of the tribe to authorize the Government, without asking the consent of the tribe, to arbitrarily divert the money which it had solemnly stipulated to pay to it, to the payment of these pretended debts, without any proof whatever of their justness—nay, which should reverse the order of things, and instead of requiring the traders to show that they were just, in order to their payment, should require the poor, ignorant, helpless Indians to show that the debts were unjust, in order to prevent the Secretary from arbitrarily paying them out of their own funds; for such was his decision, and this decision is sustained by the gentleman from Ohio. Sir, it is revolting to reason and common sense, and is repugnant to the feelings of every man who has a heart in his bosom, and which heart throbs with humane impulses. But the gentleman says, they were witnessed by our Indian agent. Some of them, and perhaps all, were; but does that add to their validity? Did that any more authorize the Government to pay them out of money which it had solemnly obligated itself to pay to the Indians, without their consent? The gentleman knows that witnessing such an instrument was no part of the official duty of the agent, and gave it no greater authenticity than if it had been witnessed by any private individual; and can the name of the witness supply the want of the signatures of the chiefs, which were necessary to bind the tribe? But the gentleman says that a fund was provided in the treaty "to pay their debts to the traders." Sir, a sum of money was agreed to be paid to the Indians by the treaty, to enable them to pay their own debts in their own way; and this very provision is a strong circumstance showing the iniquity of these obligations, and of their payment by the Secretary; for the very fact that this sum of money was to be paid to them for this purpose, shows conclusively that they intended themselves to retain the control and settlement of their own affairs; and hence, the Secretary had no right to intermeddle with them without their consent. Again; as a fund was provided by the treaty to enable them to pay their debts, it must be presumed that both they and the commissioners who negotiated the treaty, deemed it sufficient for the purpose. Now, sir, here is the provision,—it is in the fifth article of the treaty: "The United States agree to pay said nation of Indians," not to the traders, sir, not to their creditors, but to the "nation of Indians," "the sum of fifty thousand 'dollars, to enable said Indians to arrange their 'affairs and pay their just debts before leaving their 'present homes, *to pay for their improvements, to 'purchase wagons, horses, and other means of trans-'portation, and pay individuals for loss of property 'necessarily sacrificed in moving to their new homes.*" And yet, upon the same days that the treaty was executed, the agents of these traders procured from a few of the chiefs these pretended obligations, which the Secretary passed, and ordered to be paid, to nearly three times the amount of the whole sum provided for all the purposes named in the article.

But, sir, here is additional evidence that this sum was deemed ample. Here is a letter from Colonel T. P. Andrews, one of the commissioners who made the treaty. It is on file in the Department of the Interior, and a copy was sent to the committee by the late Secretary himself. In it, Colonel Andrews says:

"We (the commissioners) supposed they (the Indians) would pay off all just demands to the traders as soon as they got the $50,000, (we advised them to do so,) and we estimated that it would take about $25,000 or $30,000."

Sir, who is there that knows anything of the Indian character, and the manner in which such business is transacted with them, that does not know how easy it is, by bribing and intoxicating the chiefs—the usual means resorted to by unscrupulous traders or their irresponsible agents upon such occasions—to procure such acknowledgments to any amount? Whether such means were resorted to in this case, the House must judge from the circumstances. Here is what an eye witness says upon the subject. In the same letter from which I before read, Colonel Andrews says:

"I would state that that action of the agent of the traders (for the principal traders were not at the place at that time, or for some time thereafter) must have been clandestinely and secretly done, for they knew well that the Indians, if sober, could not have been induced to give any such fraudulent acknowledgment—I say fraudulent, for two reasons:

"1st. Because the individual chiefs whose signatures I presume are shown, had no authority to give any such acknowledgments to bind the nation or tribe, not even that part of the nation at or near Council Bluffs, much less the other portion located on the Osage river, hundreds of miles from Council Bluffs.

"2d. Because the agents of the traders who were present knew well that they had admitted substantially to me and Major Harvey, that their debts did not, at that location, amount to more than between a seventh or eighth of that amount."

But, sir, I wish to call the attention of the House to some other circumstances, which will exhibit this transaction in a still stronger light. In 1847, Congress, to avoid these corrupt practices by which the chiefs were induced to put it in the power of traders to deprive the humbler members

of the tribe of the benefit of money paid to the Indians by the Government, passed a law providing that thereafter, when money was so paid to them it might be paid *per capita*, so that each Indian in the tribe should get his just share, and that it should no longer be paid into the hands of the chiefs, to be disposed of by them as it had up to that time been.

When this law passed, these claims of which I am speaking were outstanding, and those who professed to hold them complained that it would work injustice to them, by depriving the chiefs of the means of paying off these claims. To prevent any injustice, the Commissioner of Indian Affairs, under the administration of Mr. Polk, directed them to file their claims in the department, "that they might be examined by the President;" and that if they were found to be just, their payment should be provided for out of the money due to the tribe. They were filed and examined, and in the opinion of the Commissioner, as expressed in his report of 1848, they were of a very suspicious character. These pretended obligations appeared to be based, partly, upon old balances of accounts of long standing, without any evidence of what the original accounts had been for; and we all know how easy balances of this character can be trumped up against an ignorant people, who can neither read nor write. A portion of them were for goods sold to *individual* Indians, and not to the tribe. One item, of $2,410 58, was for pretended depredations, and had been once regularly and fairly adjudicated according to law, and rejected long before these pretended obligations were procured. Under these circumstances, the Commissioner refused to allow and pay them out of the money due from the Government to the Indians, until these claimants had clearly satisfied the department that they were just.

Sir, can there be found an honest, sensible, and right-feeling man in the country who will not say that the Commissioner decided rightly? There was no law which required this Government to satisfy these claims, or in any way interfere with them. There was no obligation upon it to do so, except that general obligation resting upon all Governments to do what they rightfully may to secure the just rights of their citizens. But who will not say that our Government should be clearly satisfied that the claims of its citizens are strictly and undoubtedly just, before it should lend its powerful aid to enforce their payment, and especially against a poor, ignorant, and helpless people, having the highest and holiest claims upon it for sympathy, support, and protection?

In this situation these claims remained suspended until after the expiration of Mr. Polk's administration. The claimants did not furnish the required proof. The Indians felt safe and rested secure, supposing that the principles thus laid down would be carried out, and that these claims would not be paid without such proof, and they were satisfied that it could not be produced. Mr. Ewing came into office, and with the report of the Commissioner before him showing the suspicious character of the claims—with the treaty before him in which a fund of $50,000 only had been provided to enable the Indians to pay their just debts, and for the various other purposes therein set forth—with the treaty before him signed on the same days on which those pretended obligations were signed with the signatures of the chiefs of both bands, in all, as I have said, one hundred and thirty-three, and with the fact before him that not one of these pretended obligations was signed by one fourth of the chiefs of a single band and by none of the other—without giving any notice whatever to the Indians of his intention to take up and review the case, so that they might contest the allowance, he took it up, reversed the principles laid down by the previous Administration for their settlement, decided that these pretended obligations were national obligations of the whole tribe, and *prima facie* evidence of a just indebtedness to the amount thereof, and that the Indians, if they would defeat their payment out of their own money, must prove a negative—must show that the claims were unjust.

But, sir, what was still more outrageous, after Mr. Ewing had made this decision, he did not even then give them any notice of his action. He did not allow them the poor opportunity of introducing this negative evidence to defeat the payment, as they allege they could have done, had such an opportunity been allowed them; but he at once ordered the claims to be paid out of the annuities due the nation, and the first intimation the poor wretches had of his action was, when they found the means upon which they were depending for their miserable subsistence thereby suddenly cut off.

Such, sir, has been the protection which this Government, through the late Secretary, has given to these poor helpless people, over whom it pretends to be the guardian. Truly, sir, "it is such protection as vultures give to lambs, by covering and devouring them." This is the conduct which the venerable and conscientious gentleman from Ohio stands up here, in the presence of his God, and before the country, to vindicate. This is the conduct about the investigation of which he has such conscientious and constitutional scruples. I do not wonder at his efforts to screen it from the eyes of the people; for I much mistake their character if it does not bring down upon the author of it their severest condemnation.

I will now pass to a brief notice of the Chickasaw case. Some years back a mistake had been made in the accounts of the Chickasaw Indians with this Government. They had been improperly charged with an item of $112,042 99, and that amount had thereby been inadvertently withheld from them. Doctor William M. Gwin appeared as their attorney, and had the error corrected under the administration of Mr. Polk, and the sum was allowed to the Indians. After its allowance he claimed to be entitled, for his services in the matter, one half, or $56,021 49; and he presented at the Indian bureau what purported to be a contract between himself and the commissioners of the Chickasaw nation, and a power of attorney by the latter to him, under which he claimed to be entitled to receive that amount out of the sum allowed to the Chickasaws. This the department refused to allow, for several reasons, one of which was, that the claim was enormous and unreasonable for the service rendered, and that the Indians were under the guardianship of the Government, and that any contract or agreement entered into without the sanction of the department was invalid and of no binding effect. Another difficulty also arose to prevent its allowance. The Indians denied the

validity of the contract and power of attorney. The King denied ever having signed it, and it was alleged, also, that the persons who had signed it as commissioners were not at the time commissioners of the Chickasaw nation, but had resigned about two weeks before, and of course had no power to bind the nation. And all the evidence before the late Secretary of the Interior when he allowed the claim, at least so far as he has submitted it to the committee, tended to establish that allegation. Docton Gwin assigned the claim to Messrs. Corcoran & Riggs, bankers of this city; and after Mr. Ewing was made Secretary of the Interior they applied to him to reopen and reëxamine the case. He did so and paid it, thus trampling under foot the decision of the previous Administration. When it came up before him, the original contract and power of attorney had been lost. To it there were several subscribing witnesses. Even admitting it to have been properly executed and binding upon the nation, the money could not have been legally paid, as every lawyer well knows, without having required the claimants, after the loss of the instrument was shown, to establish the contents thereof by competent disinterested proof; and this proof should have been the testimony of the subscribing witnesses unless they were shown to be dead, absent from the country, or otherwise legally disqualified. This was not shown. Yet the late Secretary of the Interior, notwithstanding the previous decision of the department refusing to allow it—notwithstanding the Indians protested that the claim was unjust and wrongful, and that the instrument had been executed by persons who had no power at the time to bind the nation, and notwithstanding that the proof before him tended to establish that fact—allowed and paid the claim to Messrs. Corcoran & Riggs, upon the bare affidavit of Mr. Corcoran, one of the firm, as to the contents of the instrument, without requiring any proof of the date of its execution, and without requiring any proof to show that the persons executing it had at the time the power to do so.

Thus, sir, was $56,021 49, arbitrarily taken from this Indian nation out of money which we owed to them, against their earnest remonstrances, and paid as a lawyer's fee in a single case; and that case, too, for recovering from this Government the very money out of which it was paid, and which had been inadvertently and wrongfully withheld from them—paid too upon evidence which would not have been received in any magistrate's court in this country. And all this the conscientious gentleman from Ohio defends, and says we ought not to investigate.

The last case to which I shall call the attention of the House is the payment of the claim of Commodore James Barron, who served in the Virginia navy during the Revolution. This case involves not only several others which have been paid, but many yet unpaid, amounting probably to some five or six millions of dollars. I shall, therefore, give it a careful examination. Commodore Barron served until the end of the war in the Virginia navy, and according to the decision of the Virginia courts was entitled to his half pay for life from the end of the war. He died in 1787. On the fifth day of April, 1821, his administrator filed a claim with the auditor of Virginia for his half pay from he 22d of April, 1783, the close of the war, until his death, which the auditor refused to allow. The administrator appealed, under a law of that State, to the superior court of Henrico county, and that court, on the 14th December, 1823, rendered a judgment in his favor for the *half pay* and interest thereon, from the 5th of April 1821, the time it was presented to the auditor for payment and payment refused. The whole amount was $2,080 52, and on the 15th of that month it was paid to the administrator by that State. This was all that he claimed at that time, and it was all to which he was entitled by the clear and emphatic decisions of the Virginia courts upon Virginia laws, and indeed he was glad to get that, for it was for some time considered doubtful whether he was entitled to it. This was one item of the amount which was refunded to the State of Virginia by the United States, by the 1st section of the act of 1832. The case rested here, everybody supposing it was fully settled and ended, until July, 1849, after Mr. Ewing became Secretary of the Interior, when Messrs. Lyons & Vincent, as attorneys of the administrator of Commodore Barron, made application to the Commissioner of Pensions for commutation of five years full pay and interest, in lieu of the half pay for life which had been received, alleging that the administrator had made a *mistake* when he had sued for and recovered against Virginia half pay only. The Commissioner of Pensions rejected the claim, and they appealed to the Secretary of the Interior, who opened the case—set aside not a settlement merely, but the judgment of a court rendered and paid off more than twenty-six years before—overruled all the decisions of the courts of Virginia, and the decisions of the Attorneys General of the United States since 1832, among whom were some of the ablest jurists of the land—disregarded the action of Congress for the same period, and allowed the claim. The case was finally decided January the 2d, 1850. The amount allowed as commutation was $4,258 31, and upon this he allowed interest from the 22d of April, 1783, up to the time the claim was paid off in 1823, there made a rest, carried the interest to the principal, and deducted the payment then made by Virginia, and upon the balance allowed interest again until he paid the claim in 1850. So that a claim which had been fully paid all that the claimant asked in 1823, with $2,080 52, was paid over again in 1850, with $32,382 50 over and above the amount first paid, which makes the whole amount paid $34,391 02. The interest up to the time of the payment in 1823 was $10,385 83—the payment was $2,082 52, so that it will readily be seen, sir, that from that time onward, interest was allowed upon $8,303 31 of interest; hence not only allowing interest upon the claim in violation of the settled practice of the Government from its establishment, but compound interest. The amount of compound interest allowed is about $13,091 33. We thus paid, in settling this claim, that sum more than we should have had to pay, if not a dollar had before been paid upon it.

Sir, we are told by the gentleman from Ohio, and the minority of the committee, that the compound interest was paid by a mistake of the accounting officers, for which the Secretary of the Interior was not accountable. Yes, sir; a mistake of somebody else. Sir, this I look upon as the worst part of the conduct of the Secretary of

the Interior. After he had overruled, as I shall show he did, his subordinates, and prescribed this mode of calculating the interest in opposition to their judgments, and after the public had got hold of these outrageous payments, and began to bruit them abroad, he attempts to throw the blame of them upon these very subordinates. Sir, I hold in my hand the certificate of allowance in this Barron case, which was on appeal decided by himself, overruling the Commissioner of Pensions, made out by the Commissioner under that decision, in which the exact mode of calculating the interest the one which I have stated, is explicitly and minutely set out; and at the bottom of it I find the following: "Approved: T. Ewing, Secretary of the Interior." But we are told that these certificates are made out ready for his approval, and that presuming them to be correct, he signs them as a matter of course, without stopping to read them. Well, sir, this may be so as a general rule; but it seems to me that this being a case which he had himself decided, overruling the Commissioner of Pensions, he ought, and naturally would, and I presume did, read it to see that it was right before signing it. But suppose he did not; the gentleman shall not escape me so. I will show you one in a case settled before this, which he did examine, in which he expressly overruled the accounting officer and directed him to allow the interest in the same way that it was allowed in the Barron case, and that the Commissioner of Pensions, in making out this certificate, followed that direction. The case I allude to is that of Dr. John M. Galt, who was a surgeon in the Virginia State line in the Revolution. His administrator applied to the Treasury Department for the settlement of this claim in 1833, under the third section of the act of July 5th, 1832, and he was paid the sum then found to be due, $8,757 34, for the half pay for life of Galt. In March, 1849, he applied to the Secretary of the Interior for commutation and interest, and the Secretary of the Interior ordered it to be allowed. The certificate of allowance was made out by the Commissioner of Pensions, and approved by the Secretary of the Interior, directing the interest to be computed in the same manner as was afterwards directed in the Barron case. This was sent in due course of proceedings to the Third Auditor's office for administrative examination and allowance. The clerk who had it in charge in that office, brought it to the attention of Mr. Parris, the Second Comptroller, for directions as to the mode in which he should cast the interest under it. The Second Comptroller laid down the usual rule of calculating interest in such cases, the one which had always been pursued in the department; namely, that no rest should be made where there was a payment, unless the payment, when made, exceeded the interest then due. The next day Mr. Lyons, the attorney for the administrator of Galt, called on the Comptroller and insisted upon the other mode of computing the interest—insisted that a rest should be made at the time the claim had been settled at the Treasury in 1833, although the interest was $10,910 16, and the payment then made was only $8,759 34. This the Comptroller declining to do, they went together to the Secretary of the Interior for his decision. He overruled the Comptroller, and directed the interest to be computed as Mr. Lyons desired; that is, in the same way it was afterwards computed in Barron's case, which was, in fact, allowing compound interest. A claim, therefore, which had once been fully settled at the Treasury with less than nine thousand dollars, now required and was repaid with an additional sum of about $11,000—making about $20,000 in all; and even admitting that commutation and interest was allowable—which I shall show it was not—by this mode of computation, a little over $2,000 more were paid than would have been due had the payment of 1833 never been made—$2,000 more than would have been allowed, had we then thrown the $8,759 34 into the Potomac; and this, sir, by the express direction of the Secretary of the Interior, as is shown by the deposition of the Comptroller himself, which I now hold in my hand. Well, Mr. Speaker, how do you think these astute gentlemen of the minority of the committee excuse the Secretary now? Why, they say that a judgment had been rendered in Galt's case, in the courts of Virginia, which directed the mode of calculating the interest, and that he only decided that the judgment must be followed, and that he did not know that it gave compound interest. Sir, did you, did any man ever see a more arrant piece of special pleading than this? I have seen some in my life, but this heads anything I ever saw. Why, sir, what was the matter in dispute between Mr. Lyons and the Cromptroller? It was, whether the rest should be made or not—the latter insisting that it should not be made because the payment was less than the interest, and would, therefore, compound the interest. If the payment had exceeded the interest, there would have been no dispute, as then everybody admits the rest would have been proper. Then, sir, the very question was whether the interest should be compounded; and this it was that was submitted to the Secretary, and this it was that he decided. Yet the minority say he did not know that this mode would compound it. Why, what in the name of common sense did he know? They would have us believe that he approved official documents without knowing their contents,—that he decided questions without understanding the points submitted to him,—that he directed a particular mode of computation without understanding its effect. Surely they make him out an efficient officer. To save him from appearing a knave, they make him a fool. But here is what Mr. Parris himself says—I read from the last part of the first answer of his deposition. He says: "After a 'short conversation with Mr. Lyons upon the sub-'ject, (of the mode of computing the interest,) Mr. 'Lyons called with me upon the Secretary of the 'Interior, who, upon hearing our statement, coin-'cided with Mr. Lyons, and the interest was com-'puted accordingly, that being in conformity with 'the certificate issued from the Pension Office, 'which is above referred to." What statement do you suppose they made? Of course each stated his mode of calculating the interest, and his reasons for it,—the Comptroller stating that the payment was less than the interest, and that, therefore, the rest should not be made, because it would compound the interest; and the other that it should be made, notwithstanding that fact; and the Secretary coincided with Mr. Lyons. Yet we are told that he did not know that it would compound the interest!

Mr. OUTLAW. Read the last answer.

Mr. DUNHAM. Oh, yes, I intend to, sir. I shall not omit that, for I consider it much stronger against the Secretary than what I have read. Here it is, sir. He says:

"The certificate from the Pension Office prescribed the mode of adjusting the claim. Mr. Lyons called with me upon the Secretary of the Interior, to ascertain whether the interest was to be computed according to what I have stated to be the usual practice of the Treasury, or, as contended by Mr. Lyons, in conformity with the judgment of the court of Virginia. When I stated to the Secretary what had been the practice of the Treasury, viz: where the interest exceeded the payment, the interest is not to be added to the principal, the payment deducted and interest computed on the balance, as that would be allowing compound interest, he assented to its correctness, but, as I understood, considered that the judgment of the court was to be carried out in this case. I cannot say that it was particularly stated that in the case of Galt, 'the interest exceeded the payment which was to be credited.'"

Here he expressly says that he stated to him what had been the practice in the Treasury, and expressly states that the other course would be allowing compound interest. He approved the mode which did not give it, but directed that the other, which did, should be followed. And because the Comptroller says that "he cannot say that it was particularly stated that in the case of Galt the interest exceeded the payment which was to be credited," therefore, it appears to the minority that the Secretary did not know that fact, notwithstanding the Comptroller stated the practice to be, that where the interest did exceed the payment, the interest is not to be added to the principal, and the payment deducted and interest computed on that balance, as that would be allowing compound interest, and he had gone there expressly to see whether, in that case, he should still follow that practice, and the Secretary decided that he should not. The Secretary himself attempts to carry out the same pretence in a letter written to the Commissioner of Pensions on the 10th January following, some time after the allowance of Galt's claim, and after the public began to get hold of the payment of these enormous sums of interest, and it became necessary to cover up tracks and throw the blame upon somebody else. Here it is, sir:

JANUARY 10, 1850.

SIR: When my attention was called to your certificate in the case of William Graves, I perceived that you had cast interest upon interest, and immediately wrote to you stating that your mode of calculating interest was erroneous, and that it should be corrected. I did not lay down a rule for the calculation, not deeming it necessary. Since that time several certificates sent up by you have been signed in the ordinary way, without examination on my part. And now I find, on looking to them, that they contain the same error with the one which I sent back to you, namely, an allowance of interest upon interest. They differ from the first-named case in this only, that there were two compoundings of interest in that case at first, one of which was omitted in the second certificate, and there is but one in the other cases.

The error is an unfortunate one, but is excusable on your part, as I perceive that both you and the Third Auditor were misled by the opinion of the court of appeals of Virginia in the case of Galt's administrator against the Commonwealth. You have adopted in terms the mode of calculation prescribed by that decree, which was very correct in the particular case, where all of the interest and part of the principal had been paid at the time fixed upon to commence calculation of interest upon the balance; this did not involve interest upon interest, but merely interest upon the remaining principal; whereas, when applied to these cases it involves interest upon interest, and in some of them to a large amount. This must be corrected in all the cases heretofore passed upon, and the money reclaimed as paid by mistake, and in all future cases you will give simple interest merely.

Very respectfully, &c.,

T. EWING, *Secretary.*

To the COMMISSIONER OF PENSIONS.

He says "the error is an unfortunate one"—well, sir, I think it was for the Treasury—"but it is excusable on your part." Excusable, indeed! After that faithful public officer, whose integrity and watchfulness and faithfulness has stood the test of years, had resisted the payment of these claims in every form and at every step until he had been again and again overruled by the Secretary, and compelled to allow them in obedience to his express direction, I should think that it might well be said that he was excusable. Mr. Speaker, I wonder how the late Secretary felt when he penned that sentence. I wonder if a blush did not mantle his cheek.

He says, "Both you and the Third Auditor were misled by the opinion of the court of appeals of Virginia in Galt's case." Now, he very well knew that the Third Auditor had no control over the matter. The claims were allowed in the Pension Office, under his own direction and control; certificates approved by himself, as I have shown, were made out, expressly pointing out the sum to be allowed, and the mode of calculating the interest; and all the Third Auditor could do was to follow that certificate, and allow whatever it directed. He had no discretion in the matter. His duties were entirely executory.

This letter of the Secretary was written long after the allowance of Galt's case, and after the whole subject had been again brought to his mind, and after, we must presume, he had reëxamined the cases to see in how many of them this "unfortunate mistake" had occurred; and yet the grounds upon which he justifies it are not true, for, as I have before shown, the payment did not equal the interest, as he alleges. I hold in my hand, sir, the certificate issued in the case with his approval and the official statement of the account upon which it was paid, and it shows, as any one can see, that the payment did not equal the interest by $2,073 60. Is it not apparent then that, seeing the odium attaching to the payment of these enormous sums of compound interest, and in order to escape the responsibility of having himself directed the payment of it, he sought to make it appear that he had made this egregious blunder as to the relative amount of interest and payment in this case of Galt, as he knew it could be shown that in this case he had directed the mode of computation? And I wish here to remark, for the benefit of the minority of the committee, that he does not justify it, as do they, upon the grounds that a judgment had been rendered by the courts of Virginia, and that he was bound to follow that judgment. He had learned that excuse was too flimsy, and would not do. The judgment was rendered in 1847, and he very well knew, for it has been again and again decided, that judgments rendered by those courts since 1832 in these cases are not binding upon the department. The third section of the act of 1832, the only one under which these claims could possibly be paid, expressly provides for cases which have not been paid, or prosecuted to judgment, upon the principles of the half-pay cases theretofore decided, and not those that might be thereafter decided, and compound interest had never been allowed by those courts in any case prior to 1832.

But the Secretary says, "When my attention 'was called to your certificate in William Graves's 'case, I perceived that you had cast interest upon 'interest. I immediately wrote to you, stating

'that your mode of calculating interest was erro-'neous, and it should be corrected." Sir, I think this reference to Graves's case an unfortunate one for the Secretary; for it is one of the worst cases, even as it was paid after the correction to which he refers was made, that was settled by him. In that case, as the certificate was first made out, there were two compoundings. That was too much even for the Secretary; and when the dose was too large for him, it must have been enormous indeed. He directed it to be corrected, as he says in his letter. It was corrected, by striking out the last compounding; but the other was still left in. A new certificate, in accordance with this correction thus made by the direction of the Secretary, was made out and *approved by him;* and upon this the claim was paid. This new certificate directed the interest to be computed in the same manner precisely as the Secretary had himself previously directed in Galt's case; and precisely as it was afterwards computed in Barron's case. They all alike allowed compound interest. Do you not think, then, that the Commissioner was excusable in following the precedents thus expressly given him by the Secretary himself in these cases of Graves and Galt? And, sir, what must be thought by all honorable men of the conduct of the Secretary, in attempting, under these circumstances, to throw the blame upon his subordinate officers? What induced him to do so I know not; but this I know, that if they had attempted to save themselves from public reproach by exposing him, and placing the responsibility where it belonged, he had, as he well knew, the power to remove them from office, and deprive them of their bread.

This case of Graves had been twice settled and fully paid off before Mr. Ewing came into office. In 1829 it was paid off by Virginia with $2,500, all that was claimed, and all that was then supposed to be due to that State under the act of 5th July, 1832. In 1833 the representative of Graves applied to the Treasury Department for a new settlement, claiming that by some mistake he had not been paid all that was due him in 1829. The case was reviewed, and $11 78 was found due him, which was paid. This was all that was due him according to all the decisions of the department prior to the coming in of Mr. Ewing. In October, 1849, he again applied to the department for a new settlement, claiming commutation of five years' full pay, which amounted to $2,500, with interest thereon from 1783. The Secretary allowed it; and as the account was first stated, the interest was calculated upon the commutation of five years' full pay, ($2,500,) to 1829, when he was first paid off. The interest, which was $9,376 99, was added to the principal, and the payment of $2,500 was deducted from the amount, and as the payment was just equal to the principal, the balance left was interest, and upon this interest, as a principal, interest was cast to 1833, when the payment of $11 78 was made, the interest added to the principal, and the payment deducted, and upon the balance interest was again computed to the time of the settlement by Mr. Ewing, in 1849, making a second compounding. In this way, a claim which had once been fully paid off with $2,511 78, amounted, under this new system of tactics, to $17,166 78, over and above the sum before paid. The correction afterwards made was, to strike off the last compounding only, and the interest was cast upon the balance after the $2,500 were deducted, from 1829 to the time of payment in 1849, when the interest was added to the principal, and the $11 78 deducted from the amount, and the balance, $15,388 91, was paid. These claims were professedly paid under the third section of the act of the 5th of July, 1832; and if the United States were liable for them at all, this was the only law under which they could have been paid. It will readily be perceived by the statement of these cases, which I have now made to the House, that the controversy is, whether, under this act, this commutation of five years' full pay, with the interest thereon, from the 22d of April, 1783, until the time of payment, could be legally paid? In other words, whether the United States, under that act, were liable to the legal representatives of the officers of Virginia who served in her State line or navy during the Revolution, for anything more than the half pay of such officers, from the close of their service to the time of their death, which, in all of these cases, had been long since paid. In order to understand the proper construction of that act, it will be necessary for me to recur to the legislation of the old Continental Congress, not because it afforded any authority for the payment of these claims, but because it cannot be presumed that the United States, by that act, intended to grant any greater privileges to those officers of Virginia, than had been granted to those in the Continental line; and hence it is important to ascertain what was granted to them.

I must also recur to the legislation of Virginia, because, as these claims are all based upon it, and whatever of them was due was originally due from that State, and as it cannot be presumed that Congress, by the relief which it extended to her by that act, intended to make the United States liable for more than Virginia herself was liable, it becomes important to ascertain her engagements to these officers, although it by no means follows, nor do I desire to be understood as admitting that Congress undertook by that act the fulfillment of all of those engagements, for I think the contrary will be clearly established.

In May, 1778, Congress, for the encouragement of the desponding and suffering officers in the continental service, by resolution, made this provision for them after the expiration of the war, in which many of them had spent the vigor of their manhood:

"That all military officers commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war, and not hold any office of profit under these States, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one half of the present pay of such officers."

This was the first provision of the kind which had been made for the officers of that war. Afterwards, application was made to Congress to extend for life this provision of half pay. But their means were exhausted, their credit gone, and they were then already largely indebted, and, therefore, could not venture to increase the liabilities of the Confederacy by extending this provision for life; but, anxious to have ample provision made for those noble and patriotic men, they threw themselves, as they had often before, upon the liberality of the States, by passing the following resolution:

"*Resolved*, That it be, and it is hereby, recommended to

the several States that have not already adopted measures for that purpose, to make such further provisions for the officers and for the soldiers enlisted for the war, to them respectively belonging, who shall continue in service till the establishment of peace, as shall be an adequate compensation for the many dangers, losses, and hardships they have suffered and been exposed to in the course of the present contest, either by granting to their officers half pay for life, and proper rewards to their soldiers; or in such other manner as may appear most expedient to the Legislatures of the several States."

But the matter was not left here. As Virginia had provided half pay for life for her officers, to which I shall hereafter refer, and as the other States did not all of them at any rate make a like provision for theirs, it undoubtedly produced dissatisfaction among them; and as it also became necessary to raise more troops, Congress was compelled to take further action upon the subject.

On the 21st of October, it resolved thus: (see Journal of Congress, vol. 3, page 538:) "That the officers who shall continue in the service to the end of the war, shall also be entitled to half pay during life, to commence from the time of their reduction." Thus the matter remained until near the close of the war, when the officers of the army became very solicitous for Congress to make provision for the payment of their services, for which it was largely in arrear; and in January, 1783, they petitioned Congress upon the subject, and among other things, asked to have a commutation of the half pay allowed, by the different resolutions of that body, for an equivalent in gross. And on the 22d of March, 1783, Congress by resolution made this provision for them:

"Therefore, *Resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half pay promised for life, by the resolution of the 21st day of October, 1780; the said securities to be such as shall be given to other creditors of the United States, provided it be at the option of the lines of the respective States, and not of officers individually in those lines, to accept or refuse the same: *And provided, also*, That their election shall be signified to Congress through the commander-in-chief, from the lines under his command, within two months, and through the commanding officer of the southern army, from those under his command, within six months from the date of this resolution:

"That the same commutation shall extend to the corps not belonging to the lines of particular States, and who are entitled to half pay for life as aforesaid; the acceptance or refusal to be determined by corps, and to be signified in the same manner, and within the same time as above mentioned:

"That all officers belonging to the hospital department, who are entitled to half pay by the resolution of the 17th day of January, 1781, may collectively agree to accept or refuse the aforesaid commutation, signifiing the same through the commander-in-chief within six months from this time; that such officers as have retired at different periods, entitled to half pay for life, may collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period; that with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be now due to them since the time of their retiring from service, as well as of what might hereafter become due; and that so soon as their acceptance shall be signified, the superintendent of finance be, and he is hereby directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates bearing interest at six per cent. That all officers entitled to half pay for life not included in the preceding resolution, may also collectively agree to accept or refuse the aforesaid commutation, signifying the same within six months from this time."

This is all the legislation of the old Congress bearing upon the question; at least it is all that I have been able, after the most diligent search, to find; and there are two things to which I wish to call the attention of the House, in reference to it, as I think they have a very significant bearing upon the matter I am discussing. The one is, the great care which Congress took to require the officers of the continental army, provided for in the last resolution, to make a speedy election, the longest period allowed not exceeding six months, as to whether they would take the commutation thereby provided, or retain their half pay for life, so that they might not wait to see which would be the most profitable; and if they should live long, they might continue to enjoy their half pay; but if they died early, their representatives could come in and claim the commutation. And the manner in which that election was to be made: they were not allowed as individuals to make it, but it had to be done by corps and States. And the other important fact is, that Congress nowhere provided either half pay or commutation for the naval officers of the Confederacy.

These facts will, I think, aid in the construction of the law of the 5th of July, 1832, under which these claims were paid. The first act of Virginia upon the subject was passed in May, 1779, about three months before Congress passed their resolution recommending the States to make provision of half pay for life for their officers, and it probably induced that action of Congress. It provides that:

"All general officers of the army being citizens of this Commonwealth, and all field officers, captains, and subalterns, commanding, or who shall command in the battalions of this Commonwealth, on continental establishment, or serving in the battalions raised for the particular defence of this State, or for the defence of the United States: And all chaplains, physicians, surgeons, and surgeons' mates, appointed to said battalions, or any of them, being citizens of this Commonwealth, and not being in the service of Georgia, or of any other State, provided Congress do not make some tantamount provision for them, who shall serve from henceforward, or from the time of their being commissioned, until the end of the war: And all such officers who have, or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half pay during life, to commence from the determination of their command or service."—(*See 10th Henning's Statutes at Large, page* 25.)

In October, 1780, in an act making various other provisions in reference to the troops of that State in continental service, is this one: "That the officers of this State in continental service, who shall 'continue therein to the end of the (then) present 'war, shall receive half pay during life, or until 'they shall again be called into service."

Now, sir, these are the only statutes of Virginia, until one passed in 1790, to which I shall hereafter refer, which in terms grant half pay to Virginia officers, or which have any bearing upon commutation pay. They clearly do not grant commutation, but half pay only; and they evidently do not embrace the officers in her State navy. Indeed, I believe no one has ever thought or pretended that they did; and the Legislature and executive officers, and perhaps the judges of that State, seem to have doubted for a long time, as will hereafter be seen, whether they even embraced the officers of her State line. There are others which are supposed to refer to these, and to extend this provision of half pay to those naval officers; but, sir, I will read them, and the House can judge for itself.

The first act to which I shall refer, relied upon

as doing this, was passed in November, 1781. The last clause of the eleventh section reads thus:

"And that the State officers who now are in actual service, shall have the same advances of pay, and in the same manner, *for their present relief*, as the officers in continental service."

Sir, this provision cannot refer to the half pay before then granted to the officers in continental service, because that was neither an "advance" nor for "their present relief," of those officers, as it was not to commence until their service was ended. To what, then, does this provision refer? I will tell you, sir. The first nine sections of the act make provision for the payment and immediate relief of the officers and soldiers of the State in continental service only, and the sections following from the tenth to the thirteenth, inclusive, are confined entirely to provisions for the officers of the State line, and this clause was intended to extend to them the provisions made in the previous sections for the *immediate relief* of the officers in the continental service. Then follows the fourteenth section, which reads thus:

"That the officers and seamen of the navy of this State, as they stand arranged by a late regulation, shall be entitled to the same advantages as the officers belonging to this State in the land service, agreeably to their respective ranks."

This was undoubtedly intended simply to extend the advantages, which were numerous, just granted by the previous sections of the act to the officers in the land service, to those of the navy; but as half pay was not one of those advantages, and is nowhere named in the act, it could not have been granted to them by this section. The other acts relied upon are one of May, 1780, (*See 10th Hen.*, 298,) which contains this clause:

"That the said captains, together with the subaltern and all other commissioned officers in the service of the navy, including the master, surgeon, and surgeon's mate, shall be entitled to the same pay and rations, the same privileges and emoluments, and rank in the same degree with officers of the like rank belonging to the regiments heretofore raised for the internal defence of this State."

And one passed in October, 1782, (*See 11th Hen.*, 162,) the last clause of the third section of which reads thus:

"That all officers, seamen, and marines, or their representatives, shall be entitled to the same bounty in lands, and *other emoluments*, as the officers and soldiers of the Virginia line, *on continental establishment*."

There is one other from which the minority have quoted, and upon which they rely, with how much propriety the House shall judge. It is the act of May, 1782, (*See 11th Hen.*, 85,) and the first clause of the thirteenth section reads thus:

"That the navy officers, sailors, and marines of this State, shall, in all respects, have the same claims, and be subject to the same restrictions and regulations, *in all matters coming within the purview of this act*, as are allowed to the officers and soldiers in the land service of the same."

I wish here to call the attention of the House to the fidelity with which the minority have given us the law. Here is the clause as quoted in their report:

"That the navy officers, sailors, and marines, of this State shall, in all respects, have the same *claims*" "as are allowed to officers and soldiers in the land service."

It will be perceived that they unfortunately left out of the middle of the sentence, these words, "*in all matters coming within the purview of this act.*" And the importance of what was thus left out will be perceived, when I state, what no one will deny, that the act, from beginning to the end of it, does not say one word of half pay, or even allude to it in any way whatever.

Sir, I do not know what this should be called, when done by gentlemen in this honorable body—I suppose a slip of the recollection, an oversight or misreading, or some other soft phrase. But in the West, sir, we call it pettifogging; and when a person resorts to it there, we think it pretty good evidence that he has got a bad case.

This, then, is the legislation, so far as I have been able to ascertain it, which is supposed to give half pay, or commutation pay, to the officers of the Virginia State navy. It is contended, that as the previous legislation of the State had given half pay to the officers of the State in the land service, this granting to the officers of the navy the same advantages, the same privileges and emoluments, extended that provision of half pay to them. Now, sir, is it not extremely doubtful whether such was the intention? The half pay had been granted to the officers in the land service upon certain terms and contingencies. They were to serve to the end of the war; or if they had or should become supernumerary upon the reduction of their battalions they were, if required so to do, to again enter the service and continue therein to the end of the war. Nothing is said of these terms and contingencies in these provisions which it is contended extend the half pay to the officers of the navy. Again: in the language of Judge Green, in his opinion in Markham's case, "there 'were many privileges, (such as exemption from 'taxes during service,) emoluments, (such as the 'right to a supply of necessaries at prime cost 'through the agency of public functionaries, &c.,) 'and advantages, (such as having their pay made 'good from the 1st of January, 1777, according to 'the scale of depreciation,) to which those expressions might be applied without embracing this 'contingent bounty of half pay." And do not the terms rather relate to such privileges, advantages, and emoluments, and as the officers in the land service were then in the enjoyment of, and not to such as they were promised contingently in the future? It seems that it was so doubtful whether the officers of either the State line or navy were entitled to this half pay that the executive officers of Virginia refused to issue warrants for it in their behalf. In May, 1783, (11 Hen. 265,) an act was passed directing "that the auditors shall yearly issue to such of the officers of the State line and navy as are by law entitled to half pay, their warrants for the same." This granted half pay to no one. It simply directed the auditors to issue warrants to such as by previous legislation were entitled to it, leaving it to them to determine. The doubt was so great that at the very next session the Legislature of that State, by a joint resolution, directed that no more warrants for half pay should be issued to the officers of the State line; and as it was very clear that if they were not entitled to half pay, those of the navy were not, no more warrants were issued to either the officers of the State line or navy until 1790.

But, sir, it is not now material whether these acts did extend the provision of half pay to the officers of the State navy or not; for the courts of Virginia have decided, whether rightfully or not, that they do, and the United States have magnanimously relieved her of the burden, and by the act of 1832 provided for their payment at the

general Treasury. But do these acts grant to them commutation of five years full pay and interest? They clearly do not; for, to give them the broadest possible construction, they only granted to those officers the same privileges, advantages, and emoluments as had been then granted to the officers of the State in the land service, and not to such as might thereafter be allowed them; and up to that time no one contends that commutation had been allowed by Virginia to any of her officers, for it had been nowhere mentioned or alluded to, and the act of 1790 is the first and only foundation for the claim of commutation pay for either the officers of the State line or navy, if such was ever granted to either. That act reads thus:

"Whereas doubts have arisen whether certain officers hereinafter described have a right to *compensation of half pay;* for the removal of such doubts—

"*Be it enacted, &c.*, That the same compensation of half pay should be extended to those officers of *the State line* who continued in actual service to the end of the war as was allowed to the officers of the continental line, and also to those who became supernumerary, and being afterwards required, did again enter into actual service, and continued therein to the end of the war, any act or acts to the contrary in anywise notwithstanding."—3 *Hen.* 131.

The naval officers are not mentioned in it. The compensation of half pay was to be extended to the officers of the State line. But does this act give commutation of five years full pay to anybody? I think not, sir. The language relied upon for that purpose is, that the *same compensation* of half pay should be extended to those officers of the State line "as was allowed to the officers of the continental line." And it is argued, because, under the resolutions of Congress, the officers of the continental line had the privilege of taking a commutation of five years full pay in lieu of half pay for life, that therefore the State of Virginia, by granting to the officers of her State line the same compensation of half pay, granted to them the same privilege of taking, if they preferred to do so, the commutation of five years full pay in lieu of half pay for life; but, sir, this cannot be so, for if they were granted the same privileges, they must have taken it under the same limitations and restrictions. What were they? Why, in the first place, the officers in the continental service had to make their election, under the resolutions of Congress of 1783, within six months at the furthest after the passage of the resolutions; and this time had expired long before the passage of the act under consideration. They had to make their election by corps and States, through certain commanding officers. This could not be done under this act, at the time of its passage, by the officers of the State line, nor did the act require them to do so. The officers in the continental service had to make the election before time enough had elapsed for them to see which would be the most valuable, the half pay for life, or the commutation of five years' full pay. This could not be the case under this act of Virginia, for more than seven years had elapsed from the time they were entitled to receive half pay; that is, from the close of the war, or from the time of their reduction in 1783; and those who were then alive would consider the half pay the most desirable, but the heirs of those who had died would take the commutation of five years full pay, which would be the most valuable, it being equal to ten years half pay. Moreover, sir, this act of 1790 fixes no time within which such election shall be made, even after the passage of the act. And can anybody suppose that Virginia intended to put it in the power of her officers to let the matter run on for years after, and if they should be blessed with a long life, to take the half pay; but if they should die before ten years should expire, to allow their representatives to take the commutation? If this act then is construed to extend to the payment of commutation these Virginia officers instead of having the same privileges which had been extended to those in the continental service, they would have greater. It seems to me evident, therefore, that it could not have referred to the resolutions of Congress of 1783 granting commutation, as it was impossible to carry out the principles of those resolutions under this act; but it must have referred to the first act of Virginia upon the subject, viz: the act of 1779, which granted the compensation of half pay only; for certainly the Legislature must be presumed to have referred to its own antecedent legislation, and not to that of another legislative body, when the terms employed in such reference are as applicable to its own as to that of the other. The right to take commutation of five years' full pay, in lieu of half pay, under the resolution of 1783, expired within six months after its passage, and after that time those who had not made such elections were entitled to half pay only, and to all such it was a dead letter. To consider the act of 1790, as granting half pay, is, to use the language of another distinguished Judge of the Virginia court of appeals, (Mr. Brockenbrough,) in delivering his opinion in Marston's case (9th Leigh 38) a far-fetched construction of it.

But, sir, we are told that half pay for life and commutation are one and the same thing, and that, therefore, compensation of half pay is the same as commutation of five years' full pay. If all the officers had died just ten years after their half pay commenced, this would be true, but if they died in less time the half pay would be less than the commutation of five years' full pay; if they lived longer than that period it would be greater. Under these acts of Virginia, her courts decided that the officers of the State navy were entitled to half pay, contrary to a correct construction of them, in my humble opinion, however presumptuous it may seem in me to express it; but they expressly decided that they were not entitled to commutation of the five years' full pay in lieu of the half pay. There was a large class of these half-pay claims of both the State line and the State navy, the payment of which she resisted. They were the claims of the supernumeraries who were not called into service again after becoming supernumerary before the close of the war, but finally, on a second appeal of them to the supreme court of that State in 1830, that court decided favorably to their allowance. This very greatly increased the liability of the State; and after paying off a large amount of these cases, and after judgments were recovered against her for a large amount more, and there being many more still outstanding she resolved to apply to Congress for relief from them. In 1832, her Legislature appointed Thomas W. Gilmer to lay her application before Congress, which he did, and the result was the passage of the act of the 5th of July, 1832; under the third section of which the Barron and other claims to which I have referred were paid.

This act of Congress provided for three classes of cases. The first section provided for the payment to the State of Virginia the amount she had then actually paid on account of half pay promised to the officers in her line in the war of the Revolution, the sum of $139,543 66. The second section provided for the payment "to the State of 'Virginia the amount of the [unsatisfied] judg-'ments which have been rendered against said 'State for and on account of the promise contained 'in an act passed by the General Assembly of the 'State of Virginia, in the month of May, A. D. '1779, and in favor of the officers or representa-'tives of officers of the regiments and corps" therein recited, "not exceeding, in the whole, the the sum of $241,345." And the third and last section reads as follows:

"SEC. 3. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby, directed and required to adjust and settle those claims for half pay of the officers of the aforesaid regiments and corps which have not been paid or prosecuted to judgments against the State of Virginia, and for which said State would be bound on the principles of the half-pay cases already decided in the supreme court of appeals of said State, which several sums of money herein directed to be settled or paid shall be paid out of any money in the Treasury not otherwise appropriated by law."

It authorizes the Secretary of the Treasury to settle those claims for half pay of the officers of certain regiments and corps, and for which the State of Virginia would be bound on the principle of *the half pay* cases already decided, &c. Now, sir, this speaks of half pay only; not one word is said which can possibly be construed or tortured into a provision for the payment of commutation or commutation with interest. The undertaking is not a general one, for paying even all the claims for half pay, for which that State was bound, because it is expressly limited to the claims for half pay of the officers of the regiments and corps named in the second section of the act only; and if the officer did not belong to one of those particular regiments or corps, his claim for half pay could not be paid under this section, however much Virginia might be liable for it. But, sir, I am told, the act must be taken together in its construction, and that when so taken together, notwithstanding commutation of full pay is not named in this section, the term "claims for half pay" is shown to include claims for commutation pay also. Why, sir? Because it is said that the term "claims for half pay" in the third section is substantially the same, and that Congress undoubtedly intended it should bear the same meaning as the term "accounts for payments made on account of half pay" in the first section. I will read that section:

"SEC. 1. *Be it enacted*, &c., That the proper accounting officers of the Treasury do liquidate and pay the accounts of the Commonwealth of Virginia against the United States, for payments to the officers commanding in the Virginia line, in the war of the Revolution, on account of half pay for life, promised the officers aforesaid by that Commonwealth, the sum of one hundred and thirty-nine thousand five hundred and forty-three dollars and sixty cents."

And because some of the accounts of Virginia provided for by this section embraced cases where she had previously paid commutation, that therefore, the term half pay in the last section was intended to include commutation pay also. But, Mr. Speaker, I think this difference of phraseology in the two sections, instead of being the same in effect, is entirely dissimilar; and instead of showing that it was intended to provide for the same cases, I think it is the strongest evidence that it was not so intended. I am asked, wherein is the difference. I will tell you. Prior to 1830, there was a class of claims, the payment of which, as I have before said, was resisted by Virginia, and many of them were settled by special acts of her Legislature. In some of these cases the half pay exceeded the commutation and interest, but the claimants were willing to take this instead of the half pay, and the Legislature gave it to them by way of compromise, and many of them were compromised in the same way, in her courts, by officers of the State. These compromises were not made when the half pay for life exceeded the commutation and interest thus taken in lieu of it. And here I will remark that it was from these compromises, in my opinion, from the investigation I have been able to give the subject, that the practice grew up in the settlement of these claims in that State of allowing interest upon the commutation, and of considering commutation and interest as one and the same thing as half pay; and this opinion is sustained by the statements of her agent, Mr. Gilmer, in his application to Congress, upon which the act of 1832 was passed. In it he says:

"In *some* few cases the commutation has been voluntarily accepted by the officers of the Virginia State line; but the courts have uniformly rendered judgments for half pay during the life of the officer, when *it was demanded*."

Mr. Barbour, a member of Congress from Virginia, who reported the bill to the House, in his report accompanying it, intimates the same thing.

Now, this first section provided for the repayment to Virginia whatever she had then paid, and hence the language on account of half pay was used to cover those cases which had been thus compromised by the payment of commutation and interest (being less than the half pay) on account or in lieu of half pay, and which had been voluntarily accepted by the parties. Similar language is used in the second section. The direction in that section is, "to pay to the State of Virginia the amount of the judgments which have [then] been rendered against the said State for and on account of the promise contained" in her act of 1779. Now, some of these judgments had been rendered for commutation and interest, by way of compromise, as stated by Mr. Gilmer, the agent of Virginia, in his application; and hence it provided for the judgments rendered, not only for the promise of half pay, which was the only promise of the act of 1779, but also on account of it. I wish especially to call the attention of the House to the fact, that it expressly goes back to the act of Virginia of 1779, *which gave half pay only*, and makes it its basis. At the time that act was passed, not even the officers of the continental line had asked or thought of the commutation. The first commutation that was given by Congress was in 1780, and the first act of Virginia, upon which any pretence for a claim for commutation is based, is that of 1790. It seems to me apparent, therefore, that Congress, in expressly referring to the act of 1779, which gave half pay only, clearly indicated an intention to avoid all claims for commutation under the act of 1790, and intended to restrict the act to judgments rendered for half pay only, and to those cases where commutation had been paid or judgments rendered for it on account of half pay for life, and in lieu of it because it was less than the half pay. The third section provides for the payment at the Treasury Department of the claims which had neither been paid by Virginia nor pros-

ecuted to judgment against her; and therefore there was no necessity of employing in it the language on account of half pay, or on account of the promise of half pay, used in the first and second sections, to cover that class of cases of which I have been speaking; and hence it was changed to the clear and distinct expression of *claims for half pay*, clearly indicating, in my judgment, a different meaning from the language employed in those preceding sections, and an intention to confine the payments to be made under it to claims for half pay only, given under the act of 1779. Why else was this change made? Was it, as gentlemen allege, a mere accidental and immaterial one, which does not change the meaning? I will satisfy this House in one moment that this was not the case. I hold in my hand the original bill as it was introduced into the House in 1832, by Mr. Barbour, and which finally passed into this law after certain amendments were made to it, and one of which was to change this very expression. As it was first introduced, the language was like that in the first section, "for and on account of the promise of half pay during life." This was so amended as to leave the expression as it now stands—"claims for half pay." I will read this section of the original bill, that gentlemen may see for themselves. The bill, as first introduced, contained six sections, but it was so amended as to throw the second, third, fourth, and fifth into one—the second in the act, as it passed; and the sixth became the third; and, as first introduced, it read thus:

"SEC. 6. And to all such officers or their legal representatives, who claim from the State of Virginia, upon the same promise made to those of the above-mentioned regiments or corps, and to those of no other corps or regiments, the amount of such judgment as they or any of them may hereafter recover against the Commonwealth of Virginia for and on account of the promise of half pay during life made by that State to the officers of these regiments and corps."

So, sir, you see that the change was not an accidental or an unmeaning one. What else could it mean, then, but to confine it to claims to be settled under this section to half pay only, and to exclude commutation?

Another thing that shows that this is a correct construction of the act is, that this was all that Virginia asked. She neither asked Congress to pay commutation or interest. Her agent expressly stated in his application, that Virginia had never commuted the half pay of her officers. But here are his own statements, in his same petition from which I before read:

"With the exception of a few cases, it is the principal only of these half-pay claims which Congress are asked to refund to Virginia, as no interest was allowed on the claims which have been adjudicated by the courts.

"The State of Virginia has never commuted the half pay of her officers, as was done by Congress in regard to the half pay of the continental officers.

"It was not competent for Virginia to do so, or otherwise to vary her contract under which the claims were asserted, without the consent of the contracting parties, and the officers of the State line never petitioned for commutation as those of the continental line did."

Again, sir: in a written statement which the agent made to the select committee who reported the bill to the House, and which they appended to their report, he says that—

"The State of Virginia never commuted the half-pay claims of her officers, and as it is probable that the claimants would not now take five years full pay instead of the half pay for life, unless where the officer died within two years of the close of the war, in which case the Government would not give it."

Ah, sir, he little thought that interest was ever to be allowed upon that commutation.

Now does any one suppose that Congress intended to pay these officers more than they were entitled to from the State of Virginia? They must have been very liberal indeed; and even supposing, as is now contended, that Mr. Gilmer was mistaken, and that her courts had decided that they were entitled to commutation and interest, that cannot alter the case. We must interpret the acts of Congress, not by what was true, but by what was represented to them to be true, and what they believed to be true, because it was upon this that they acted. Of this Virginia cannot complain, because Mr. Gilmer was her legally authorized agent, appointed under her laws, and of course she is bound by his acts and representations. He said, in effect, that Virginia did not ask commutation or interest. Can any one suppose the law intended to give what was not claimed and more than was claimed? Besides, the general practice of this Government has always been, as shown by the Secretary himself, in stating the case of Ewell (to which I shall hereafter refer) for the opinion of the Attorney General, not to allow interest on claims outstanding against it, and to have provided for the payment of commutation and interest by this act would have been a violation of that rule. The claims were then outstanding, and no time was fixed within which they were to be presented for payment at the Treasury; and the interest under such a construction would have continued to run, as the Secretary has, indeed, since allowed it, until the party himself might choose to present it. Here, then, would be debts outstanding against this Government, with interest accumulating, which it could not pay off, however much disposed, until the holder might choose to present them for payment, and thereby stop the interest. Can it be supposed that Congress ever intended such a thing when there was no obligation upon this Government requiring it? Is it to be presumed that Congress intended to grant to the officers of Virginia or their representatives, greater advantages than had ever been granted to those of the other States in continental service? Yet, if this act extends to the payment of commutation, such were granted by it; for as I have shown the latter were compelled to make their choice, to take commutation in lieu of half pay within six months at longest, and that by corps and States, if, therefore, the representatives of an officer of Massachusetts, or Pennsylvania, or New York, who had died years ago, as most of them did, but who did not make that choice within that time, or if he had been desirous of making the choice within that time, and his brother officers of the same corps or State, as the case might be, overruled him, and therefore deprived him of the privilege of taking commutation, should now present their claim for adjustment. They would be allowed half pay only during his life, without interest, which might amount to two thousand dollars; whereas, the representatives of an officer who served in the same capacity in the Virginia State line would be allowed his commutation of five years' full pay, which would, perhaps, as in Graves's case, be the same sum, yet they would be allowed the interest under the construction given to this act by the late Secretary of the Interior from the close of the war until now, which would make it twenty thousand.

Sir, Congress never intended to make this distinction—never did make it. They only allowed what that section, in plain language, expresses, to the officer of Virginia what the one from the other States would have been allowed at the same time and under the same circumstances—half pay only, without interest. This construction has been put upon it by every Secretary of the Treasury and War, and every Attorney General, before whom the subject has ever been brought, from the passage of the act until the incoming of General Taylor's administration. Claims for commutation, or for commutation and interest, have been invariably rejected, and half pay only allowed. Among those who have thus decided is that distinguished jurist, the present Chief Justice of the United States. The decisions were made after the most careful and thorough examination. The opinions, many of them, are able and elaborate—not such as some which I will soon show you, upon which this settled practice of the Government has been ruthlessly overthrown. This section was thus construed, as I shall now show, both by Virginia and by Congress. The latter has repeatedly refused to give it a different construction, or to grant any legislation for the payment of commutation.

In 1833, at the second session of the Congress which had passed the act, the Treasury Department having, in the mean time, decided that this section did not authorize the payment of commutation or interest, this joint resolution was passed by the House, but failed in the Senate. The preamble, after simply reciting the third section of the act of 1832, continued—

"And as the Supreme Court of Appeals has decided that the officers of the State line who were entitled to half pay under the laws of Virginia, should be paid a commutation of full pay for five years, in lieu of half pay, with interest thereon at six per cent. per annum, from the twenty-second day of April, one thousand seven hundred and eighty-three, till paid:

"*Be it therefore resolved, &c.*, That it shall be the duty of the Secretary of the Treasury, in the adjustment and settlement of the claims provided for in said section, to allow to the claimants the five years' full pay, instead of half pay for life, with interest from twenty-third day of April, one thousand seven hundred and eighty-three, until paid, applying this principle to cases heretofore presented, as well as to cases hereafter to be presented under said third section."

Now, sir, I will show you another beautiful piece of the consistency of this minority of the committee, and to what straits they have been driven, in trying to bolster up the conduct of the late Secretary of the Interior. One great effort made by them in their report, and by the gentleman from Ohio and the gentleman from Virginia, in their speeches, has been to show that the House had no right to make this investigation; that it could result in no good; that no action of this House could or should control Executive action in reference to the allowance of these claims; that if we pass the resolutions reported by the committee they should have no weight with the executive officers; and I believe the gentleman from Virginia threatens an impeachment if they should allow them to control their action. Yet one of the strong grounds taken by the minority of the committee, to justify the construction put by Mr. Ewing upon this law, is the passage of this resolution by the House only. They say it was a legislative construction of it, and entitled to great weight. So, sir, I will let one part of their argument answer the other; and, moreover, I will turn them over to the tender mercies of the gentleman from Virginia upon this point; but I will show them that the action of this House, in the passage of that resolution, instead of being an argument in favor of the construction which they give to that act, is directly the reverse. Sir, I regret that this minority, in ransacking the musty pigeon-holes to find something to sustain this conduct of the Secretary, did not see proper to examine a little closer, so as not to have overlooked and neglected so many important things. Did they think no one could examine musty records but themselves?

Now, sir, I hold in my hand this resolution as originally introduced into the House. The preamble then contained the following important paragraph, in continuation of it as passed:

"And as it was the intention of Congress, by the said third section, to pay to the said officers the same sum which they would have been entitled to have received from the State of Virginia, but from the wording of said section the intention of Congress is rendered doubtful, and the officers of the Treasury do not feel themselves authorized by the construction which they have put upon said section to allow and pay the commutation of five years full pay with the interest thereon from the date aforesaid:

"*Be it therefore resolved,*" &c.

The preamble and resolution were referred to a committee, which amended the former by striking out this whole paragraph. The committee reported them back to the House, which concurred in the amendment without a division, and passed the preamble and resolution in their present shape. The same House, therefore, which had at the previous session passed the act, expressly refused to say that it was intended to authorize the payment of commutation. In 1838 and in 1844, and perhaps at other times, Congress refused to extend the act to the payment of commutation. I will here remark, sir, that the part of the preamble not stricken out, should have been, for it is not true in fact, for, so far from the supreme court of appeals having decided that the officers of the State line who were entitled to half pay under the laws of Virginia, should be paid a commutation of full pay for five years, in lieu of half pay for life with interest, it had expressly decided that a large portion of them, those who had become supernumerary before the end of the war, and were not required to, and did not again enter the service, were not entitled to commutation, although they decided them entitled to their half pay. I will also remark, that officers of the navy are not even alluded to in the preamble or resolution.

But, sir, we are told that there is an act, passed in 1835, and a section in the civil and diplomatic appropriation bill of 1848, by which Congress has given such a construction to it as to cover them; and to these the Attorney General and the minority of the committee have resorted for authority to justify the payment of these outrageous claims. Sir, upon a question of such importance, and after Congress had for years approved and acquiesced in the construction given to the act of 1832 by executive officers, and after it had more than once expressly refused to change that construction or to extend its provisions, you will naturally expect to find something clear and emphatic in its action which should authorize excutive officers to decide that it had at last determined to do so. Well, sir, here it is. This is the act passed March 3d, 1835. It is "An act to continue the office of Commissioner of Pensions." What an act, sir, in which to look for a change of the construction of an antecedent law, by which hundreds of thou-

sands of dollars are to be appropriated from the Treasury!

The 4th section transfers certain duties, which had before been discharged by the Secretary of the Treasury, to the Secretary of War; and among others, those "in relation to Virginia claims for revolutionary services and deficiency of commutation" were so transferred. These duties were afterwards transferred, on the organization of the Department of the Interior, with the Pension Office, to that department. Sir, who but the Secretary of the Interior and the late Attorney General would have found anything in the mention of the simple words "*deficiency of commutation*" in an act intended merely to transfer certain duties from one department to another, which should change the settled construction of a law solemnly given to it by the Executive Department and law officers of the Government, and which Congress had expressly refused to alter or interfere with? It is said that the fate of empires turn upon small events, and surely, sir, in these latter days, the fate of the public Treasury hangs upon small matters indeed, and especially when an excuse is sought to plunder it. The old adage says, "A small leak will sink a ship," and it seems, too, that a very slight stroke of the pen in this instance has produced a leak in the Treasury, which, if it does not empty it, has given it, under the care of the two very learned doctors who lately had it in keeping, a very free depletion, and which will still be continued until it will reel from the effects of it, unless we speedily staunch the leak. Sir, is it not astonishing that none of the able men who have been at the head of the War Department, and who have filled the office of Attorney General from 1835 to the incoming of the administration of General Taylor, notwithstanding the incessant importunity with which these claims have been urged against the Government, never dreamed that those two little words changed the law of 1832? Yet it is even so. The wonderful discovery was left to the late Attorney General, and lucky was it for these claimants that he did discover it, for I do believe he is the only man living, or who ever will live, that would have done so. Sir, it is ridiculous to talk about such a construction having been given by this act. Why, sir, after this act was passed several decisions were given both by the Secretary of War and the Attorneys General against the allowance of commutation.

The State of Virginia did not so understand it, for on the 10th day of February, 1838, her Legislature passed joint resolutions "instructing her Senators and requesting her Representatives in Congress, among other things, to procure the passage of a law, that in future all claims for commutation as aforesaid (that is, commutation of five years' full pay in lieu of half pay for life) be settled at the Treasury Department as the *claims for half pay are now settled under the act of the 5th of July*, 1832. Not one word, sir, about the act of 1835." Her Senators and Representatives did make the attempt, but Congress refused to grant the request. Congress, at other times since 1835, expressly refused to extend the act of 1832 to commutation claims, or to make any provision for the payment of them, so that neither the executive nor legislative department, nor the Legislature of Virginia, recognized any change of this act by that of 1835. That a Legislature may by its acts give a construction to an antecedent law no one pretends to deny, but when that antecedent law has received a clear judicial or executive construction, and that construction has been long acquiesced in, the intention to change it should be plainly and explicitly expressed, not left in doubt or to inference, and when the subsequent legislation relied upon as indicating that purpose can be fairly explained in a way consistent with that previous construction, that explanation should undoubtedly be given to it. Now, what is the meaning of "deficiency of commutation," as used in the act of 1835? It is this: I have shown that some of these officers prior to 1832 had taken commutation and interest in lieu of half pay, when it was not equal to it. The act of 1832 allowed them half pay, and hence the departments have decided that these persons were entitled to have the deficiency between the commutation and interest which they had received, and the half pay to which they were entitled made up to them, and this deficiency is what is meant by the term "deficiency of commutation;" and this is the only explanation which can be given to it, for commutation in lieu of half pay is not "deficiency of commutation;" and this explanation is consistent with the act of 1832 as heretofore construed, and therefore this act does not change that.

Now let us briefly examine the act of 1848, and see if it changes the construction given to the act of 1832 so as to extend it to payment of commutation. The clause of that act relied upon for this purpose reads thus:

"For repayment to Virginia money paid by that State under judgment of her courts against her to revolutionary officers and soldiers, and their representatives for half pay and commutation, a sum not exceeding eighty-one thousand two hundred and seventy three dollars and seventeen cents: *Provided, however*, That the agent of said State shall first deposit authenticated copies of the acts or judgments under which the money was paid by the said State of Virginia."

Is there anything in this to change the act of 1832? Clearly not. It does not allude to it in one way or another. That act provided for cases which had before that been paid by Virginia, to cases wherein judgments had before then been rendered against her, and to claims for *half pay* then outstanding and which had then neither been paid by nor prosecuted to judgment against her. After the passage of that act, and the Treasury Department had refused to pay claims for commutation and interest under it, judgments were recovered upon such claims against the State of Virginia in her courts to the amount of this appropriation. These judgments Virginia had paid, and this sum was appropriated to repay to that State the amount she had thus paid: not because the United States were under any obligation to do so by the act of 1832, or otherwise, but because Congress chose voluntarily to assume this further but limited responsibility.

Sir, if commutation was payable under the law of 1832, where was the necessity for this appropriation? for that act appropriated whatever sum was necessary for the payment of all claims payable under it. The very fact that this was made, is evidence that Congress did not consider claims for commutation provided for under that act. The minority of the committee felt the force of this position, and attempted to avoid it by saying that that act provided only for the payment of such claims to individuals, and not to the State; and that, as these had been paid off by and were

now due to her, this appropriation was necessary to pay them to her. This, then, is an admission that the claims paid by this appropriation were not provided for by that act. Can it, then, be pretended that it has any bearing whatever upon the construction of that act, especially as, in making the appropriation, no allusion whatever was made to it? So that this does not at all relieve them. Again, sir: Why was the amount limited to this particular sum, if the intention in making this appropriation was to construe the law of 1832, which made an unlimited appropriation, as embracing all claims for commutation and interest? Sir, to allow the executive officers of this Government to interpret an act making a limited appropriation for the payment of certain specified claims, as giving a new construction to a previously-existing law, making an unlimited one, and to which it neither refers nor alludes, extending it to the payment of all similar claims, is monstrous, and, if tolerated, will put it out of our power to so restrict our appropriations as to prevent the Treasury from being plundered *ad libitum*. There is nothing, sir, in this appropriation made in 1848 which refers to or affects the act of 1832, or in any way changes the interpretation which had always before then received. This, then, destroys the whole case of the minority of the committee,—destroys the only ground upon which the opinion of the late Attorney General, allowing these claims, rests, and the only justification for the payment of them by the late Secretary of the Interior; for if this appropriation did not change the construction of the law of 1832, so as to extend it to claims for commutation, as I think it is clear that it did not, then these claims have been paid without law. It is, perhaps, hardly necessary for me to say that they were not paid out of this appropriation of 1848, as it was expressly made for the State of Virginia, and had been paid to her before they were paid by the Secretary.

But, sir, even admitting all that is claimed by the Secretary of the Interior, by the Attorney General, and by the minority of the committee, that naval officers were entitled to commutation under the laws of Virginia, and that the payment of commutation is authorized by the third section of the act of 1832, either by a fair interpretation of it as passed, or by a construction since given to it by the subsequent action of Congress, and I will yet show, beyond the possibility of a doubt, that thousands of dollars have been paid in violation of law and the Constitution. That section provides for "the settlement of claims *which had not been paid or prosecuted to judgments against said State.*" Three of these claims *paid by the late Secretary had been paid by that State*, and two of them *had been both prosecuted to judgments against that State, and paid by her* before the passage of the act, and of course could not have come within the purview of it under any possible construction which can be given to it; therefore, their payment can not be justified. This point cannot be successfully met; and, sir, so plain is it, that the minority of the committee has not, nor have any apologists of Mr. Ewing, attempted to meet it. How many more of these claims which he has paid were in the same situation, I know not. Here, then, are many thousands of dollars beyond all cavil squandered by him, not only without law, but in direct violation of law; and yet we are told that the people's representatives have no right to investigate these transactions in order to ascertain the facts; and we find the late Secretary's political friends upon this floor rallying to prevent the exposure of them.

Sir, if the principles upon which these claims have been allowed are to be continued in practice, the descendants of these Virginia officers are most fortunate beings, for, notwithstanding they or their ancestors were fully paid off years ago all that they then claimed as due them—all that was due them, yet the sum is considered and treated as still remaining in the Treasury, drawing interest; in other words, they have in the public Treasury a continually-accumulating fund, which they may demand and receive whenever they please, but which the Government cannot relieve itself of without their consent. It is decided by these cases, that the officer at any time during his life, or his representatives, since his death, had a right to settle with the Government, take the half pay for life, and yet the amount of the commutation is considered to have still remained in the Treasury drawing interest, and that now he may come in, demand a new settlement, make a new choice, and take the commutation and interest upon it from 1783 until the present time, merely deducting what was, twenty or thirty years ago, paid him as half pay, without allowing interest upon that.

Sir, how do you like this administration of public business? How do you think the people will like it? I am inclined to think they will not approve of Mr. Ewing's financiering.

But, sir, interest should never have been allowed upon commutation—there is nothing to justify it. Its allowance is predicated upon the resolutions of Congress of 1783, which gave commutation to her continental officers, and which said that the officers should be entitled to receive the commutation "of five years' full pay, in money, or securities bearing interest at six per cent. per annum, as Congress shall find most convenient." Now, sir, I think I have shown that the provision of this resolution has never been extended to the officers of the Virginia State line or navy; but, for the moment, admitting that it has been, what is the plain meaning of it? Simply, that whenever the officer presented his claim for payment at the Treasury, the Government might pay him the cash, if it chose. If it was not convenient to pay the cash, then it was to pay him in stocks; and the stocks issued to pay the claim were to bear interest from the time of payment, but not the claim before the payment was made. Certainly, if the officer had a right to elect whether he would take half pay or the commutation, the Government could not pay until he had determined which he would take, and of course could not be in default for non-payment until he had done so, and it could not be liable for interest until it was in default, even by the principles of allowing interest between individuals, but which do not in fact apply to governments. In all these cases, which had been paid or prosecuted to judgment against Virginia at the passage of the act of 1832, the parties made their election when they received their pay or took their judgments; and they were fully paid according to that election. In the others, which became payable at the Treasury, the election was not, and could not be made until they were presented for settlement, and then they have all been paid in cash. That

act authorized no other mode of payment. The rule of the Government is not to pay interest except express contract requires it, or the act authorizing the payment of the claim directs it. The law of 1832 says not a word about the payment of interest, neither does the acts of 1835 and 1848, relied upon as giving a construction to that of 1832 The other officers of the Revolution were not allowed interest upon such claims until they had presented them for payment, and then only upon the stocks which they received in payment, and from the time they were issued to them in payment.

Mr. Speaker, it is said that, as a matter of justice, we should pay whatever liability Virginia incurred in the prosecution of the war. This, I admit, and this we have done, and more, by the act of 1832. In the prosecution of the war she had incurred liability for half pay only to her officers; and as I have shown, and as her own legislation and the action of her own courts show, it is even doubtful whether that extended to the officers of her navy. By that act we provide for the payment of half pay to the officers of that State in all cases where she is liable, according to the decisions of her own court of appeals. If commutation of five years' full pay was ever granted, it was by her act of 1790, long after the war ceased; consequently, if she then increased her liability to her officers—her own citizens, it was not in aid of the war; it was entirely voluntary on her part, and she had no right after the war ceased to enlarge her liabilities, with the expectation that this Government would relieve her from them; and justice does not require that this Government should relieve her from such increased liability, which did not, and could not inure to its benefit.

The friends of the late Secretary of the Interior attempt to justify him in making these payments, by seeking to throw the responsibility upon the late Attorney General. We are told that all of these claims were paid upon, and in accordance with his opinions. Sir, this is partly, but not entirely true. The Attorney General has the reputation of being a man of talents and an excellent lawyer, but though he may be very able and learned, I think he is no match for the late Secretary in the way of shrewdness and low cunning. Sir, do you recollect that old fable which tells us that the cunning monkey, upon a certain occasion, took the paws of the cat to pull nuts out of the fire. Well, sir, I think the late Secretary used the Attorney General pretty much in the same way. He used him to shield himself from all dangerous responsibility. Upon every occasion when the former settled practice of the Government was to be overturned, a favorite to be rewarded, or the Treasury to be plundered, he resorted to him for an opinion, and by inuendos, misstatements of the case, and other means, he always managed to get an opinion in accordance with his wishes. Oh, yes, an opinion of the Attorney General was a sovereign balm for every ill of the gentleman's conscience, took away from him all necessity for exercising his own judgment, authorized any violation of law, and justified any wrongful and reckless squandering of the public moneys, however flagrant. But, sir, I will show you the way in which the Barron case was decided, and the time when the opinion of the Attorney General was taken, and you shall see whether the case was decided upon that opinion or not. The case was submitted to the Commissioner of Pensions by Messrs. Lyons & Vincent. Colonel Edwards very correctly decided against it, and Mr. Lyons took an appeal to the Secretary of the Interior, and he referred it to the Attorney General for his opinion. His opinion was not given speedily enough to suit Mr. Lyons, who began to be very importunate for a decision. He wrote to Mr. Ewing, bitterly complaining of the delay, and beseechingly asking him to take the case back into his own hands, and to decide it, and not to delay for the opinion of the Attorney General. Mr. Lyons's letter making this request bears date December 10, 1849; and here is a specimen of the endearing language which it contains. He says:

"I have now waited for much more than a *month*, and yet the Attorney General has not been able to consider the case; and now that the Supreme Court is in session, he probably will not be able to do so for some time, if during the Winter. *Under these circumstances, my dear sir, could you not take the case back into your own hands, and dispose of it?*"

Whether he could have resisted this affectionate appeal or not, is doubtful. I think he would have confessed the soft impeachment. But Mr. Lyons was afraid to trust to it alone. He knew his man; knew what would give him the *coup de grace;* and after a little more in the same sweet style, he winds up with an irresistible argument. You will not be astonished, after hearing it, to learn that it succeeded triumphantly. Indeed, you would have been surprised if it had not. Here it is, sir. Listen whilst I read it, that you may not lose a single word or syllable. It is the last clause of the letter, and like the postscript to a lady's, sir, it is the most important part of it; but I will no longer keep you in suspense. I will read it. He says:

"I regret very much to see the state of things in Washington. What our southern friends can expect to accomplish which will benefit the party or the country by the opposition to Mr. Winthrop, I cannot perceive."

There, sir! Could anything else be added?—could anything else be necessary to convince the Secretary that Mr. Lyons's case had been very much neglected, and that it should be decided upon without delay? Well, sir, he did decide it. How it got back into his hands, I know not; nor doth the records inform us; or whether, indeed, the papers were returned to him, I do not know. The first thing the records show is, that on the 31st of December, only twenty days after Lyons's letter was written, he decided the case, and allowed the claim. Here is his letter to the Commissioner of Pensions, announcing that fact. It is short, and if not sweet, sir, to the point:

DEPARTMENT OF THE INTERIOR, *Dec.* 31, 1849.

SIR: In the cases of Commodore Barron and Captain Richard Barron, I am of opinion that the claims for commutation and half pay should be allowed.

An opinion of the Attorney General to the same effect will be transmitted to you in a few days. Very, &c.,

T. EWING, *Secretary.*

To the COMMISSIONER OF PENSIONS.

At this time, and for thirty days thereafter, there was no opinion furnished by the Attorney General in the case. Indeed none ever was furnished to the Secretary. Nor do I believe that one ever would have been furnished to anybody but for the fact that the payment of these enormous and illegal claims was soon bruited abroad, and excited surprise and indignation. The public press began to open upon the Secretary for having paid them. Old Father Ritchie, I think, about this time, got

after him. It became necessary for him to cover up his tracks, and he determined to place the good-natured Attorney General between him and danger; he therefore, on the 31st day of January, 1850, wrote to him this letter:

DEPARTMENT OF THE INTERIOR, *Jan.* 31, 1850.

SIR: You will oblige me by stating in writing, in a note *addressed to the Commissioner of Pensions*, the grounds of your decision in Barron's case, that it may serve as a guide for his further action. I am, &c.,

T. EWING, *Secretary.*

Hon. REVERDY JOHNSON, *Attorney General.*

The Secretary requests him to put the grounds of his decision in writing, not for his guide, but for the guide of the Commissioner of Pensions. Well, sir, I do not wonder the Commissioner began to ask for something to guide his future action, for after twenty years of faithful service he found himself for the first time all adrift, without rudder, chart, or compass, and I should think with but little confidence in the pilot. But this about putting in writing the opinion for the future guidance of the Commissioner, is thrown in as a pretence that a verbal opinion had been previously given. I say a pretence, for the whole thing, upon its face, bears evidence that it was gotten up for the occasion. This about putting in writing is altogether too calculatedly and formally put in, to be natural; and then the Attorney General takes too much pains in his reply, giving his opinion in writing, to allude to this particular request of the Secretary to put his opinion "in writing," for it to be an ordinary unconcerted business transaction. It was contrary to the usage of the departments to receive and act upon as official a verbal opinion of the Attorney General, so that such an one would have been the simple, gratuitous, friendly opinion of Reverdy Johnson, and not an opinion of the Attorney General of the United States, and as such could have been no guide for or justification of the official act of the Secretary. Well, sir, here is the opinion in writing; surely you will expect to find a long, elaborate, and able one, upon a case which has been so long agitated, numerous authorities quoted and commented upon. It will be full of profound reasoning and legal lore; to the student a rich treat, and to the practical lawyer a fund of legal knowledge. Here it is, [holding it up;] it covers the half of a page of foolscap. Here is the opinion which has overturned the settled practice of the Executive Departments of the *Government* upon these claims for years; which has done what Congress has again and again refused to do; which has overruled some of the most elaborate and able opinions of all his distinguished predecessors since 1832, and which has overruled the decision of the supreme court of appeals of Virginia, in giving construction to Virginia laws. Here is the opinion upon which thousands, and, for aught we know, hundreds of thousands of dollars have already been plundered from the people, and by which the doors of the Treasury of the Republic are thrown open for millions more to be taken from it. Sir, I must read it; such a treasure should not be withheld from the House and the country:

ATTORNEY GENERAL'S OFFICE, *Jan.* 31, 1850.

SIR: At the request of the Secretary of the Interior, communicated to me, in an official note of yesterday, that I would state to you "in writing," the grounds of my decision in the Barren case, "that it may serve for a guide for further action," I have the honor to state the decision was founded on the opinion, that upon the principles of the judicial decisions of the Virginia courts, officers of the navy of that State during the revolutionary war, who served to its close, were equally entitled with officers of their line to commutation pay, under the act of that State of 1780, and upon that ground stated in several opinions I have given in relation to such pay to officers of the line, that these claims are also due by the United States, under the act of 5th July, 1832. Very respectfully, your obedient servant,

REVERDY JOHNSON.

Mr. EDWARDS, *Commissioner, &c., &c., Washington.*

This letter gives not a single logical reason. It cites not an authority. It refers to the other opinions, but they are as brief and as vague as this, and some of them still more so. To write it must have required ten minutes. And, sir, the very haste with which it was got up betrays its object. The Secretary's letter was received one day, and the opinion was furnished the next. Like Jonah's gourd, it grew in a single night, and like it, sir, it should have withered in the morning.

A former Attorney General, I think Mr. Nelson, in giving an opinion against a similar claim, said, if the question were an open one he should feel called upon, in any opinion which he might express, to give a very full and particular statement of the reasoning by which that opinion was controlled. The gentleman from Virginia says, that the subject is one of such great intricacy, and requires so much research, that it is impossible for the members of this House to give it sufficient attention to understand it; that he himself has spent two weeks in trying to investigate it, and is yet unable to understand it; that the gentleman from Ohio, who, he says, is an able lawyer, told him that it was the most difficult and knotty subject he had ever undertaken; that it had puzzled the best lawyers in Virginia, and yet this learned Attorney General required but a single night to decide it. Why, sir, how he towers above all these others in legal ability. What a mental Hercules he must be, and does not this opinion exhibit his unwonted superiority? No wonder gentlemen should think this House should be hushed into silence, and awed into humble acquiescence by his opinions, and that we should not impiously venture to question them.

But, sir, I said this decision overruled the decision of the supreme court of appeals of the State of Virginia. I hold in my hand, sir, the first volume of Leigh's Reports. On page 524 will be found the decision of that court in Markham's case, pronounced by Judge Green, in which it is expressly decided that officers of the State navy of Virginia were not entitled to commutation or interest; and the reason given is a very forcible one. I will read that reason. I cannot take time to read the whole opinion:

"It was only by force of the provisions of the act of Virginia of 1790 that commutation and interest in lieu of half pay for life could be allowed. That act was *confined in its terms to officers of the State line, not extending to those of the navy,* and the former laws putting the officers of the navy upon the footing of those of the army in respect to all privileges, emoluments, and advantages, referred only to such as *were then allowed them, and not to such as might thereafter be allowed, and, consequently, officers of the navy could not claim commutation under the act of* 1790."

"The former laws" here referred to by the learned judge are those which I have before given you as the ones upon which the claim for half pay for life for the navy officers was predicated, and were all passed prior to 1790, and of which this same judge, in a former opinion given in this very case, expresses great doubt whether they entitled them even to half pay. This decision is a knotty obstacle in the way of the justification of the pay-

ment of this commutation and interest to Commodore Barron—a real lion in the path; and how, sir, do you think the minority of the committee attempt to escape it? Why, sir, they say it was merely an *obiter dictum* of the judge, a decision upon a point not before the court for its consideration; and, moreover, they have made a grand discovery in regard to it; they say that it is extremely doubtful whether this opinion—supplemental opinion, as they choose to call it—was ever pronounced in court by Judge Green during the pendency of the suit, and therefore it is not the opinion of the court, but of Judge Green as an individual, and not authoritative. Here is an opinion, purporting to have been properly pronounced in open court, regularly inserted as authoritative in the reports of cases decided in that court, respected and regarded and acted under for twenty years by the courts and lawyers of Virginia without the slightest suspicion of its authenticity. Not one of the Representatives of that State, on this side of the House at any rate, among whom we recognize some of her ablest lawyers, will now make himself so ridiculous here and at home as to question either the authenticity of the decision or the correctness of the principles upon which it is based. Indeed, two of them have expressly declared that naval officers were not entitled to commutation and interest, and yet this wise minority have solemnly announced, without any reason but what is furnished by their own imaginations, that it may be reasonably doubted whether it was ever pronounced in the court.

Sir, do not such things show that the whole tendency of that minority report is not to lay before the House an unvarnished statement of facts but to stifle—to cover up and whitewash the conduct of the Secretary of the Interior? But let us see whether this opinion was a mere *obiter dictum*. Markham's case was first argued before the court upon the single point whether he was entitled to half pay for life. This point was decided. After the opinion upon it was pronounced, the report of the case informs us, "*two other questions arose and were argued at the bar*. 1st. Whether Capt. Markham's representative was entitled to half pay for life, or to commutation of five years' full pay. 2d. Whether he was entitled to interest." Then follows the opinion upon these points, expressly deciding, as before stated, that naval officers were not entitled to commutation or interest. It was not a supplemental opinion, for it supplied no deficiency in the first, as these points were not raised until after that was pronounced. This opinion was pronounced at the same term of the court as the the other. Lilly's case, which was a similar claim for half pay, was decided at the same term and between the delivering of the first and second opinion in Markham's case. Some of the judges in deciding Lilly's case, refer to the first opinion delivered in Markham's case, and in the second opinion in Markham's case the judge refers to the decision made in Lilly's case. Now is there anything unnatural or irregular in this? Certainly not. Everything comes in regular order, and yet this is all the minority have upon which to raise a doubt of the authenticity of that second opinion. But here is some more of the handiwork of this consistent minority. They quote largely from the opinions upon the first point raised in Markham's case, which depended entirely upon the legislation of Virginia *previous* to the act of 1790, as bearing upon the point decided in the second opinion in that case, and which depended entirely upon that act.

Mr. Speaker, I have one thing more upon which I desire to remark. I said that the opinion of the Attorney General, in some of these cases, had been obtained upon a misstatement of the case. I have here the statement made, in asking his opinion in Ewell's case. As it is not very long, and shows how the thing was done, I will read it:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, *July* 14, 1849.

"SIR: The case of Thomas Ewell's heirs is respectfully referred to you, for an opinion on the single question, whether the applicants are entitled to interest upon the commutation due their ancestor, and if so, for what time.

"Sovereigns never pay interest, unless it be due by special contract, or by direct assumption. It is presumed that they are at all times able and willing to pay their debts and comply with their contracts, whenever demand is made and proof adduced to establish the claim.

"This claim rests upon the resolution of the 22d March, 1783, which provides, 'that such officers as are now in service, and continue therein to the end of the war, shall be 'entitled to receive the sum of five years' full pay, in 'money, or securities bearing interest at six per cent.' The securities are to bear interest, but for what time? From the time they are issued, or from the time of the service?

"Nothing is said of interest if the payment be in money; and by the act of Congress of July 5, 1832, third section, it can be made in money only. Can interest be allowed on this money by the accounting officers? I confess I entertain strong doubt on the subject; and if the thing were *res integra*, my opinion would be against it.

"But the Virginia courts have in all cases given judgment for interest as well as principal—in some cases for interest alone, where the principal had been fully paid; and this claimant could, I suppose, go before their courts and recover interest, and then come and present his claim, and, under the act, the United States must pay it.

"Yet is it not the safer course, under all the circumstances, to reject the claim for interest until the claimants shall so recover it; or until an act of Congress, in direct terms, provides for its payment? The case of Galt, in which you gave an opinion, (March 27,) was one in which a judgment had been recovered against Virginia, and which recovery the United States had expressly assumed to pay. In Ewell's case there is no judgment, and the decisions in Virginia not being in the direct case, are not absolutely binding upon us, though entitled to great respect as authority. A judgment of the courts of Virginia, when obtained, must, as I have already said, be paid, *interest* and all. It is, therefore, no advantage to the United States to withhold the payment of interest. But is the case actually made in which the accounting officers can pay it?

"I throw out these hasty suggestions, to call your attention to the difficulties which I find in the matter, and wish your early attention to it.

"I am, sir, &c., T. EWING, *Secretary*.

"Hon. REVERDY JOHNSON, *Attorney General*."

He says sovereigns never pay interest unless it be due by *special contract* or by direct assumption. No one pretends that in these cases there has ever been a direct assumption, by Congress, of interest on these claims. Then what was the contract? Why he gives it himself. It was to pay the claims in cash or in securities, meaning bonds or notes of the United States, whichever you choose to call them, and these, when issued, are to bear interest at six per cent. And then he asks the ridiculous question, "The securities are to bear interest, but for what time?" For what time could a bond or note bear interest? Why, certainly only from the time it was given. It could not bear interest before it was in existence. You might allow interest on the debt before the note was given, in liquidation of it; but that would not be interest upon the note. But these claims were not and could not, as he shows in the very next paragraph, *be paid* in these securities, but must be paid in cash only. The *securities, then, were never issued*—were never

in existence, *to bear interest for any time* whatever.

He says: "I confess I entertain strong doubts upon the subject."

Yes, sir, well he might, when he has just said that the laws under which he was professedly acting said nothing about interest if the payment be in money, and that it could only be in money.

He continues: "And if the thing were *res integra*, my opinion would be against it."

Well, sir, it was *res integra*, for it was the very first case in which interest had ever been allowed at the Treasury Department on such a claim; but both the commutation and interest had been repeatedly disallowed.

But he says the Virginia courts allow interest, and this claimant could, he supposes, go before their courts and recover it, and then present his claim, and, under the act (of 1832) the United States must pay it; and what is here supposition, he states as certainty further along. This, sir, is not true; and it is upon this misstatement that the Attorney General, to a great extent, bases his opinion. In that opinion he says:

"It is true, that in the claim now before me a judgment has not been obtained against Virginia for the amount demanded, but it is clear that she is liable for it, and that her courts will so decide. *In that event, you concede that the United States will be compelled to indemnify Virginia*, if she pays, or to *pay the claimants if they then present their claims to the United States.*

"This being so, and I think it is beyond all doubt, I am of opinion that the interest should be paid as well as the principal, and at once."

I have shown that the act of 1832 does not make the judgments of the courts of Virginia, rendered since its passage, binding upon the United States. It will be recollected that a proposition to make them so was contained in the third section of that act as first introduced into the House, but was stricken out before it became a law. They have never been so regarded at the department; and for good reasons, too, because Virginia courts would be rendering judgments in favor of Virginia citizens, which this Government would have to pay and when it had no officer or other person in its employ in those courts to resist the recovery and protect its interests. Not that I would presume those courts corrupt; but courts always become careless and less vigilant when there is no resistance in a case. Sir, you allow a party in court to have his own way, with no one to oppose him, and he must have a bad case indeed if he cannot gain it. Before the passage of this act Virginia herself had to pay these judgments when recovered against her, and it was then a different thing altogether. Then it was the duty of her able Attorneys General to defend her interests; and whenever a claim was of doubtful character it was most vigorously resisted. It may now be their duty to appear against them; but if so, as their client does not have to pay, and has no interest in resisting, the appearance is merely a *pro forma* one. Well, let us look at the rest of the letter. He says, it is, therefore, no advantage to the United States to withhold the interest; but is it not safer to wait until an act of Congress shall directly authorize its payment? Now, sir, what a confession is here! He has overruled, and overturned, and upturned all the action of this Government in reference to these claims—trampled under foot the opinions of his predecessors—and paid out immense sums of the public money upon a construction of law, upon the correctness of which he was himself doubtful, when he had to search for reasons and excuses to justify it, and to make a case not warranted by the facts.

This whole letter, Mr. Speaker, seems to say: Johnson, I should like to let these fellows have this money, but I am afraid it's most too tough a case. I don't exactly like it. I don't hardly think the law will justify it; but, do you think you can make anything out of it? For God's sake do try. Give me an opinion in favor of it if you can, but I am afraid it is a little too tough even for you. Well, he did give an opinion, and such another opinion as it is. It can only be equalled by the other I have shown you. What cared he for new acts of Congress when he had such a genius for construing the old ones? Mr. Speaker, Why the Secretary was so anxious to pay these old, and to say the least of them doubtful claims, and when his authority, by his own showing, was at the very best but doubtful, and in such hot haste, too, I know not. Perhaps he had some grateful recollections of divers large sums of money heretofore realized from the citizens of that good old State, by speculations in her land scrip. Perhaps glorious visions of a second operation of a similar character were flitting ravishingly before his eyes.

Mr. Speaker, I have now done what I thought my duty required of me—I have, as well as I am able under the circumstances, presented the merits of this matter to the House. I think I have vindicated the correctness of the report of the committee and of the resolutions recommended by it. I think I have shown that these sums of money have been illegally and improperly paid. Can there be any doubt of this? Are gentlemen willing to put themselves upon the record as justifying their payment? They will not, they dare not, and hence the gentleman from Ohio [Mr. VINTON] and the gentleman from Virginia [Mr. BAYLY] are seeking by their amendments, to avoid the issue--to escape a direct vote upon the merits of the case. Sir, is the House willing that such claims shall continue to be paid? If not, it should at once pass these resolutions, and thereby manifest its unqualified disapprobation of the payments already made. To reject them with the facts before us, will be construed as a sanction of such payments. It must be borne in mind that the settlement of these cases has established precedents which, if we now refuse to condemn, will continue to be followed, and such payments will go on. Executive abuses never go backwards, never die of themselves. They must be checked, eradicated, and prevented by legislative action, or not at all.

But, sir, it is asked what good it will do to pass these resolutions. It is said that the action of this House alone can have no binding effect upon the executive officers. Sir, it will be a strong rebuke from the immediate representatives of the people, which will not be slightly felt, nor easily disregarded, and which will exert a salutary influence upon such officers in future. Let it be distinctly understood that abuses in the administration of the Government cannot escape the vigilance and scrutiny of the people's representatives, that reckless, inefficient, or corrupt conduct will invariably be investigated and exposed to the country, and I assure you it will do more to prevent such things than all the laws and penalties we can make or impose. Sir, the Treasury is peculiarly under our

care. It is our especial duty to guard it and to prevent it from being plundered, to prevent the public money from being recklessly or illegally squandered. It is through our action that the public money is supplied. It cannot legally be drawn from the Treasury without our sanction. We are, therefore, responsible to the people for its expenditure, and I should like to know how gentlemen can reconcile it with their official duty, when such transactions as these are brought to their notice, to endeavor to withhold the knowledge of them from the people, or to refuse to place upon them the seal of their unqualified condemnation.

Sir, I hope these resolutions will pass, but I fear, from the indications here, that they will not; that by a peculiar combination of circumstances, they will be defeated, not directly, for gentlemen dare not do that, but by avoiding the issue. Be it so: but I give gentlemen notice, that if it shall be so, the case shall not rest here. We will appeal to that great and independent tribunal—the people; and I have no hesitation in saying, that the verdict of their condemnation will be speedily pronounced against this conduct of the late Secretary of the Interior, and all those who, by their votes, shall justify and sustain it in this House.